TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

[redacted]

THE UNITED STATES OF [redacted], APPELLANT,

vs.

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY ET AL.

FILED [redacted]

[redacted]

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

FILED JANUARY 4, 1916.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

VOLUME II.

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(25052)
(25071)

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Order Appointing Examiner and Fixing Time for Taking Testimony.

In the District Court of the United States, Eastern District of Pennsylvania.

The United States of America, petitioner,
v.
The Reading Company and Others, defendants.

And now, January 27, 1914, upon motion of Frederic R. Coudert, Esq., special assistant to the Attorney General, and upon filing the affidavit of said Frederic R. Coudert verified January 27th, 1914, and it appearing from said affidavit that good and exceptional cause therefor exists; it is hereby

Ordered and decreed, That Charles H. Guilbert be, and he hereby is, appointed examiner in the above cause in accordance with the rules of this court, for the purpose of taking the testimony therein, either within or without this district, and to report the same to the court according to the rules and practices thereof; And it is further

Ordered, That the depositions of Robert W. de Forest and George O. Waterman, as witnesses for the petitioner, and of Edward Hamlin, Louis Zepfler, Frederic Parker, and William Unruh, as witnesses for the defendants, and of any other witnesses that may be produced by either party be taken before said examiner at such times and places within or without the district as he may appoint; And it is further

Ordered and decreed, That the taking of such depositions on behalf of the petitioner be proceeded with not later than the 9th day of February, 1914, upon three days' notice to the defendants, and that the testimony to be taken on behalf of the petitioner be concluded not later than the 10th day of March, 1914; that the testimony on behalf of the defendants be proceeded with not later than the 17th day of March, 1914, on three days' notice to the petitioner, and concluded not later than the 24th day of April, 1914, and that any testimony in rebuttal on behalf of the petitioner be proceeded with not later than the 27th day of April, 1914, on three days' notice to the defendants, and be concluded not later than the 6th day of May, 1914, and that a transcript of all of the testimony taken be filed in this court not later than the 23d day of May, 1914; And it is further

Ordered and decreed, That the fees of said examiner, including his expenses for stenography and typewriting, be, and they are hereby, fixed as follows:

For taking said testimony and transcribing the same for filing in this court, not to exceed the sum fixed by the rules of this court.

Geo. Gray, *C. J.*

Jan'y. 27, 1914.

*1 In the District Court of the United States, Eastern District of Pennsylvania.

September sessions, 1913.

THE UNITED STATES OF AMERICA, PETITIONER,
v.
READING COMPANY, PHILADELPHIA & READING RAILway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, The Lehigh Coal & Navigation Company, Wilmington & Northern Railroad Company, Lehigh & Hudson River Railway Company, Lehigh & New England Railroad Company, George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. DuPont, Daniel Willard, Henry P. McKean, and Samuel Dickson, defendants.

In equity, No. 1095.

Met pursuant to notice at No. 2 Rector Street, New York City, Monday, February 9, 1914, at 11 o'clock a. m.

Present: The examiner; Frederic R. Coudert and Howard Thayer Kingsbury, special assistants to the Attorney General, for the Government; Charles Heebner, Esq., for the Reading Company, Philadelphia and Reading Railway Co., Philadelphia & Reading Coal & Iron Company, The Wilmington & Northern Railway Co., and George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. DuPont, Daniel Willard, Henry P. McKean, and Samuel Dickson; Jackson E. Reynolds, Esq., and Robert W. DeForest, Esq., for Reading Company, Philadelphia & Reading Railway Co., Philadelphia & Reading Coal & Iron Co., Central Railroad Co. of New Jersey, and Lehigh & Wilkes-Barre Coal Company; H. S. Drinker, jr., Esq., for Lehigh Coal and Navigation Co.; William J. Turner, Esq., for Lehigh and New England Railroad Company.

2 M. ELVIN THOMPSON, having been duly sworn, was examined as follows:

By Mr. KINGSBURY:

Q. What is your occupation?

A. Topographical draughtsman.

Q. You are associated with what firm?

A. C. S. Hammond and Company. Their factory is 22 Thames Street, New York City, and their business office is 30 Church Street, New York City.

* Marginal figures refer to pages in stenographer's minutes.

Q. Have you recently prepared a map showing parts of the States of New Jersey, Pennsylvania, and New York?

A. Yes, sir.

Q. In what manner did you prepare this map and from what source?

A. It was mainly taken from geological survey charts, also from United States post-route maps from the Postal Department.

Q. From any other sources?

A. It was mainly taken from those sources.

Q. Will you please produce the map?

A. Yes, sir.

(Map produced by witness.)

Q. Explain what you have shown in respect to the railroads upon this map and how they are designated?

A. The railroad of the Central Railroad of New Jersey is shown 3
in a real heavy blue, the Lehigh and Hudson River Railroad is shown in green, the Lehigh and New England Railroad is shown in yellow color. The Lehigh and Susquehanna, shown as a subsidiary of the Central Railroad of New Jersey, is shown in a real light blue; the Panther Creek, also controlled by the Central Railroad of New Jersey, is shown in real light blue. The Philadelphia and Reading Railway is shown in a deep red; the Wilmington and Northern Railroad is shown in light red. This company is also operated by the Philadelphia and Reading Railway.

Cross-examination by Mr. REYNOLDS:

Q. What is your authority for marking the line running directly between Mauch Chunk and Lansford dark blue, as owned by the Central Railroad of New Jersey?

A. According to the information I have compiled it from. The Geological Survey sheet showed that road is owned and operated by the Central Railroad of New Jersey.

Q. That is your only authority?

A. Yes, sir. That is the only authority I have for all of this, from the United States Geological Survey.

Q. You have no personal knowledge of the nature of that railroad?

A. No; I have never been in that territory in my life.

Q. And the whole information is hearsay as to that?

A. Yes, sir. 4

Q. In reading your legends you stated that the Panther Creek was a subsidiary of the Jersey Central. You have a Panther Creek marked as running from Hauto to Tamaqua?

A. From information that I received, it runs from Lansford to Tamaqua overland, and from Lansford to Hauto it goes through a tunnel, to the best of my knowledge.

Q. What is your authority for stating that the railroad of the Panther Creek is a subsidiary of the Jersey Central?

A. The way I received the information is from Poor's Railroad Manual.

Q. And that also is entirely hearsay?

A. Yes, sir.

Q. From your knowledge of the contour maps, which you say you used in compiling this map, can you state where geographically the line colored in dark blue on this map, starting at Mocanaqua, on the Susquehanna River, and running across the main line of the Jersey Central, makes its connection with main line of the Central Railroad of New Jersey?

A. I could not tell you offhand.

Q. That part of the road which I have just described is marked in dark blue, which, according to the legend, is the Central Railroad of New Jersey proper and not a subsidiary?

A. Yes, sir.

Q. What is the source of information upon which you made that predicate?

5 A. Poor's Railroad Manual of the United States.

Q. And that also was from hearsay?

A. Yes, sir.

Q. What was your authority for coloring the three anthracite coal regions and delimiting them as you have?

A. That was taken from a State atlas of a firm by the name of Bean, in New York City, and also compiled from information received from the Geological Survey Department, which shows in all States all locations of all kinds of cannel, soft, and hard coal, clay, and other deposits found in each State in the Union.

Q. Then that information is also hearsay?

A. Yes, sir. I have no personal knowledge of that country at all.

Q. And you have no knowledge of the real accuracy of your coloring the southern field running easterly from Tamaqua to the Lehigh River as the Schuylkill region?

A. No, sir; nothing except the Geological Survey sheets, which are marked by a man from the Geological Survey Department, and are supposed to be correct and up to date in all respects. They are changed annually.

Q. That, according to your recollection, throws the Schuylkill region into that territory lying between Tamaqua and the Lehigh River?

A. Yes, sir.

6 By Mr. COUDERT:

Q. You followed the Geological Survey in making that?

A. Yes, sir.

Q. That is the best authority in this country?

A. Yes, sir.

Q. You know that as a map expert?

A. Yes, sir; I know it personally, because there are a thousand and one copies of maps in the country which are not from practical knowledge, but the survey maps are supposed to be the most correct that you can find in the country.

By Mr. KINGSBURY:

Q. This is a compiled map? It does not purport to have been made from original surveys?

A. No, sir; this is compiled from the Geological Survey sheets.

By Mr. TURNER:

Q. What is your authority for showing that the Lehigh and New England Railroad is extended from Slatington to Tamaqua?

A. From the latest information on the Geological Survey sheet, which shows that it has been a lately built road.

Q. From Slatington?

A. Yes, sir.

Q. Are you sure it is not from another point east of Slatington, and that the extension crosses the Lehigh River at Lehigh Gap?

A. We never show any connection between rivers in that respect, 7 because the way of showing it is in our dots, and they are close together.

Q. Do not the maps from which you gathered this information show that the Lehigh and New England Railroad is extended from a point between Danielsville across the Lehigh River at Lehigh Gap rather than at Slatington?

A. I can't tell you that right offhand. This was taken from the United States post-route maps.

Q. Have you the maps with you?

A. No, sir.

Mr. TURNER. The Tamaqua extension of the Lehigh and New England Railroad is constructed from a point near Danielsville in Northampton County across Northampton and Carbon Counties, crossing the Lehigh River at Lehigh Gap to Tamaqua. The Lehigh and New England Railroad now owns and operates the system of railroads formerly called the Panther Creek Railroad, which is shown here in blue and said to be a part of the Jersey Central system.

(Map produced and identified by the witness offered in evidence by Government counsel and marked "**Exhibit No. 1.**")

Government counsel offered in evidence copy of the mandate of the Supreme Court of the United States in the case of the *United States* v. *Reading Company and others*, dated December 16, 1912, and including the supplemental mandate, dated April 23, 1913 (marked "**Exhibit No. 2.**")

Exhibit No. 2 is as follows:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the Judges of the District Court of the United States for the [Seal.] *Eastern District of Pennsylvania, greeting:*

Whereas lately in the Circuit Court of the United States for the Eastern District of Pennsylavnia, in a cause between the United States of America, petitioner, and the Reading Company, the Philadelphia & Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, the Mount Lookout Coal Company, the Lackawanna Coal Company, Limited, the Temple Iron Company et al., defendants, wherein the decree of the said Circuit Court, entered in said cause on the 20th day of December, A. D. 1910, is in the following words, viz:

"This cause having come to a final hearing upon pleadings and proofs, and having been argued by the counsel of the respective parties on the 21st, 22nd, 23rd, and 24th days of February, 1910, in this court, before the three circuit judges of the Third Judicial Circuit, under the provisions of the act of Congress known as the 'expe-
9 diting act' of February 11, 1903, and the said pleadings, proofs, and arguments having been duly considered by the said judges and their written opinions having been duly filed, it is now, on this 20th day of December, 1910, by the said Circuit Court, ordered, adjudged, and decreed:

"First. That the defendants, Reading Company, Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, and the New York, Susquehanna & Western Railroad Company, prior to the time the petition was filed, entered into, and at the time and since the filing of the said petition were and have been joined together in a combination in restraint of trade and commerce among the several States by and through the instrumentality of the defendant the Temple Iron Company in violation of the act of Congress approved July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies;' that the shares of the capital stock of the Temple Iron Company, claimed to be owned and held by or in the interest of each of the above-named defendants, were acquired and are now held by it or in its interest in pursuance and furtherance of such unlawful combination; and that the shares of the capital stock of the Northwest Coal Company, Edgerton Coal Company,
10 Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited, likewise were acquired and are now held in violation of said act of Congress by the defendant, the Temple Iron Company.

"Wherefore the above-named detendants, their officers, agents, servants, and employees, are enjoined and prohibited from continuing the combination hereby adjudged to be illegal and from hereafter entering into any like combination in restraint of trade and commerce

among the several States in anthracite coal in violation of said act of Congress.

"And each and all of the above-named defendants, their officers, directors, agents, servants, and employees, are hereby restrained and enjoined from hereafter acquiring any shares of the Temple Iron Company, from voting or attempting to vote any of such shares at any meeting of stockholders of said the Temple Iron Company, from collecting or receiving any dividends or other profits thereon, and from exercising or attempting to exercise any control, direction, supervision, or influence whatsoever over the acts of said corporation. And it is further ordered, adjudged, and decreed that the Temple Iron Company be, and it is hereby, restrained and enjoined from permitting shares held by any of said defendants, or any company controlled by any of them, to be voted at any corporate meeting of the said the Temple Iron Company, from paying to any of them any dividends on account of such shares, and from permitting or suffering any of them to exercise any control over its affairs. 11

"And the defendant, the Temple Iron Company, its officers, agents, or representatives, are hereby further enjoined from exercising any control over any of the property or assets of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited, from voting the shares of capital stock of such companies, and from receiving any dividends or other profits accruing thereon.

"*Provided*, That nothing herein contained shall be taken as preventing the said defendant, the Temple Iron Company, from selling and disposing of the shares of the capital stocks, assets, and properties of the Northwest Coal Company, Edgerton Coal Company, Sterrick Creek Coal Company, Babylon Coal Company, Mount Lookout Coal Company, Forty Fort Coal Company, and Lackawanna Coal Company, Limited, acquired by it as hereinbefore stated and found to have been acquired by it in violation of the said act of Congress, to any bona fide purchaser or purchasers not in privity with any of the defendants herein and not sustaining any relation in interest direct or indirect, by trust or otherwise, to or with any of said defendants, and distributing the remainder, if any, of the proceeds thereof after the payment of its bonded and other indebtedness, among the holders of the capital stock of the said defendant, the said The Temple Iron Company. 12

"Second. That the charge made in paragraph seven (*b*) of the petition, concerning the combination by which it is alleged the Erie Railroad Company acquired the capital stock of the New York, Susquehanna & Western Railroad Company, in violation of the act entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, is not sustained, and the petition in respect of that charge is dismissed.

"Third. That the charge made in paragraph seven (*c*) of the petition concerning the combination by which it is alleged the Reading Company acquired a majority of the capital stock of the Central Railroad Company of New Jersey in violation of the act entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, is not sustained, and the petition in respect of that charge is dismissed.

"Fourth. That the general charge in paragraph seven of the petition concerning an alleged combination or conspiracy in violation of the act entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, in the development of which it is averred the other combination set forth in said petition were used as steps, is not sustained, and the petition in respect of that general charge is dismissed.

"Fifth. That the charge in paragraph seven (*a*) of the petition concerning an alleged combination for making and maintaining the so-called 65 per cent contracts is not sustained, and the petition in
13 respect of that charge is dismissed.

"Sixth. That the petitioner do recover from Reading Company, Philadelphia & Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, and the Temple Iron Company, defendants herein, its taxable costs as to so much of the proceedings as relate to the subject matter of the first paragraph of this decree, and shall have execution therefor.

"Seventh. That except as to defendants Reading Company, Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, the Temple Iron Company, Mount Lookout Coal Company, and Lackawanna Coal Company, Limited, in the particulars hereinbefore specified, the petition is dismissed.

"December 20, 1910.

"GEO. GRAY,
"JOS. BUFFINGTON,
"W. M. LANNING,
"*United States Circuit Judges, Third Circuit.*"

14 as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the United States, an appeal taken by the Temple Iron Company, and an appeal taken by the Reading Company, the Philadelphia & Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, the Mount Lookout Coal Company, and the Lackawanna Coal Company, Limited, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twelve, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, on separate appeals, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Circuit Court in this cause declining to enjoin the minor combinations be and the same is hereby, affirmed.

And it is further ordered, that this cause be, and the same is hereby, remanded to the District Court of the United States for the Eastern

District of Pennsylvania, with directions to dismiss the petition, without prejudice, in so far as it seeks relief against the said three alleged minor combinations. 15

It is further ordered, adjudged, and decreed that the decree of the said Circuit Court as to the Temple Iron Company combination be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed that the decree of the said Circuit Court as to the sixty-five per cent contracts be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said district court with directions to enter a decree cancelling each of these contracts, and perpetually enjoining their further execution, and for such proceedings as are in conformity with the opinion of this court. December 16, 1912.

And afterwards, to wit, on April 7th, A. D. 1913, the following order was entered in said cause, viz:

"This cause came on again to be heard upon five several petitions filed by the Pennsylvania Coal Company, the Elk Hill Coal & Iron Company, the New York, Susquehanna and Western Coal Company, Hillside Coal & Iron Company, and the Delaware, Lackawanna & Western Railroad Company, parties to the cause as alleged holders of sixty-five per cent coal contracts, praying that the direction in the opinion heretofore filed that the cause should be remanded with direction to enter a decree cancelling each and every of the sixty-five per cent contracts referred to in the pleadings held by any of the parties to the cause, and for a modification of the mandate so as to exclude 16 from cancellation the five several contracts described and referred to in the said five separate petitions.

"And it appearing that the United States, by its Attorney General, has answered the several petitions, and that in respect to that of the Pennsylvania Coal Company assents to the petition and consents that such modification be made as to dismiss the bill in so far as it is thereby sought to cancel the contract between the Pennsylvania Coal Company and the Elk Hill Coal & Iron Company of March 1, 1902, referred to in the petition of the Pennsylvania Coal Company, upon the concession that the agreement 'is substantially different from the series of agreements known as the sixty-five per cent contracts adjudged unlawful by this court,' it is accordingly so entered.

"As to the application of the four other petitioners named above for like relief, the United States denies and contests the right of each, contending that in substance and principle the facts in respect of each of the contracts in respect of which relief is sought are not similar to the contract between the Pennsylvania Coal Company and the Elk Hill Coal & Iron Company, but fall within the general series of the sixty-five per cent contracts condemned by the judgment of this court. 17

"Upon this issue the transcript is confusing and the briefs inadequate. The court therefore deems it wise in the exercise of its judgment to decline any determination of the question upon the present record. It is therefore ordered that the mandate of this court, be so modified as to exclude from the direction to cancel the sixty-five per cent contracts referred to in the pleadings the said contracts mentioned in the four petitions, namely, that of the Elk Hill Coal & Iron Company, the New York, Susquehanna & Western Coal Co.,

Hillside Coal & Iron Company, and the Delaware, Lackawanna & Western Railroad Company, and that the cause, so far as concerns the contracts of the said petitioners, be remanded to the district court with direction to hear and determine the merits as presented by said petitioners, and make such decree as law and justice require."

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice and the laws of the United States, ought to be had, the said appeals notwithstanding.

Witness the honorable Edward D. White, Chief Justice of the United States, the 23d day of April, in the year of our Lord one thousand nine hundred and thirteen.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

18 Endorsed: Supreme Court of the United States Nos. 198, 206, & 217, October term, 1912. The *United States* v. *The Reading Company et al.; The Temple Iron Company* v. *The United States; The Reading Company et al* v. *The United States.* Mandate filed May 26, 1913, Wm. W. Craig, Clerk. B.

Government's counsel also offered in evidence copy of the decree of the District Court of the United States for the Eastern District of Pennsylvania in the case of the *United States* v. *Reading Company and others*, entered upon the mandate of the Supreme Court, and dated May 26, 1913.

19 Copy of decree marked "Exhibit No. 3."

Exhibit No. 3 is as follows:

In the District Court of the United States, Eastern District of Pennsylvania.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
READING COMPANY AND OTHERS, DEFENDANTS. } In Equity, No. 1095.

DECREE.

This cause having come on for hearing before this court and having been determined by a decree, entered December 20, 1910, from which the plaintiff and certain of the defendants appealed to the Supreme Court of the United States, which has in part modified and reversed the decree of this court and issued its mandate filed herein May 26, 1913, remanding the cause and containing directions as to the decree to be entered by this court;

Now, therefore, upon consideration, it is ordered, adjudged, and decreed as follows:

SEC. 1. That the aforesaid decree of this court, entered December 20, 1910, is set aside in so far as it failed to sustain the charge of the petition in respect of the so-called 65 per cent contracts and dismissed the petition as to that charge and as to any defendants who were or are parties to such contracts, with the exceptions hereinafter

20 expressly stated.

SEC. 2. That the so-called 65 per cent contracts made by the defendants, the Philadelphia & Reading Coal & Iron Company, the Lehigh & Wilkes-Barre Coal Company, the Lehigh Valley Coal Company, the Delaware, Lackawanna & Western Railroad Company, Hillside Coal & Iron Company, the Pennsylvania Coal Company, and the New York, Susquehanna & Western Coal Company, severally, with other named producers before the court, for the purchase of anthracite coal mined or owned by the latter, as set forth in the pleadings and evidence, excepting a contract dated March 1, 1902, between the Pennsylvania Coal Company and Elk Hill Coal & Iron Company; a contract dated November 1, 1900, between the New York, Susquehanna & Western Coal Company and John Jermyn and Joseph J. Jermyn; a contract dated October 21, 1903, between Hillside Coal & Iron Company and Lackawanna Coal Company, Limited; a contract dated October 26, 1899, between the Delaware, Lackawanna & Western Railroad Company and Peoples' Coal Company; and a contract dated May 1, 1907, between the Delaware, Lackawanna & Western Railroad Company and George F. Lee Coal Company, from the times they were entered into have restrained and monopolized trade and commerce among the States in violation of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890.

Wherefore, said contracts, with the exceptions stated, are hereby cancelled, and the defendants who are or were parties thereto, their 21
officers, directors, or other agents or assigns, are hereby perpetually enjoined and prohibited from further executing them directly or indirectly.

SEC. 3. That paragraph "second" of the aforesaid decree entered December 20, 1910, disposing of the charge of the petition in relation to the acquisition by Erie Railroad Company of the capital stock of the New York, Susquehanna & Western Railroad Company, is hereby modified so as to read as follows:

"That in respect of the charge based on the alleged acquisition and holding by Erie Railroad Company of a majority of the capital stock of the New York, Susquehanna & Western Railroad Company, the petition is dismissed, but without prejudice to the right of the United States to institute any other suit or proceeding under the aforesaid act of July 2, 1890, or under any other authority, based in whole or in part on the same facts."

SEC. 4. That paragraph "third" of said decree, entered December 20, 1910, disposing of the charge of the petition in relation to the acquisition by Reading Company of a majority of the capital stock of the Central Railroad Company of New Jersey, is hereby modified 22
so as to read as follows:

"That in respect of the charge based on the alleged acquisition and holding by Reading Company of a majority of the capital stock of the Central Railroad Company of New Jersey the petition is dismissed, but without prejudice to the right of the United States to institute any other suit or proceeding under the aforesaid act of July 2, 1890, or under any other authority, based in whole or in part on the same facts."

SEC. 5. That in respect to the charge based on the alleged acquisition and holding by Erie Railroad Company of the capital stocks of the Pennsylvania Coal Company, Erie & Wyoming Valley Rail-

road Company, and Delaware Valley & Kingston Railroad Company the petition is dismissed, but without prejudice to the right of the United States to institute any other suit or proceeding under the aforesaid act of July 2, 1890, or under any other authority, based in whole or in part on the same facts.

SEC. 6. That the petition is dismissed as to the contract dated March 1, 1902, between Elk Hill Coal & Iron Company and the Pennsylvania Coal Company (R., I., p. 163), among other things providing for the sale of coal by the former to the latter, but without prejudice to the right of the United States to challenge the legality of said contract in any other suit or proceeding.

SEC. 7. That paragraph "sixth" of the aforesaid decree entered December 20, 1910, relating to costs be modified so as to read as follows:

"That plaintiff recover from the defendants, Reading Company,
23 Philadelphia & Reading Railway Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, Lehigh Valley Railroad Company, Erie Railroad Company, the New York, Susquehanna & Western Railroad Company, the Temple Iron Company, the Philadelphia & Reading Coal & Iron Company, the Lehigh & Wilkes-Barre Coal Company, the Lehigh Valley Coal Company and Hillside Coal and Iron Company its taxable costs in this court as to so much of the proceedings as relate to the subject matter of the first paragraph of this decree and to the charge in paragraph seven (*a*) of the petition concerning the combination for making and maintaining the so-called sixty-five per cent contracts, and shall be entitled to have execution therefor."

SEC. 8. That jurisdiction of this cause is retained by this court for the purpose of hearing the parties and determining whether under the principles declared by the Supreme Court in its opinion herein four certain contracts set forth in the pleadings and evidence, namely, a contract dated November 1, 1900, between the New York, Susquehanna & Western Coal Company, John Jermyn and Joseph J. Jermyn, a contract dated October 21, 1903, between Hillside Coal & Iron Company and Lackawanna Coal Company, Limited; and a contract dated October 26, 1899, between the Delaware, Lackawanna & Western Railroad Company and Peoples' Coal Company; and a contract dated May 1, 1907, between the Delaware, Lackawanna & Western Railroad Company and George F. Lee Coal Company should
24 be cancelled; and for the purpose of making such further orders and decrees, if any, as may become necessary for carrying out the mandate of the Supreme Court.

May 26, 1913.

GEO. GRAY,
JOS. BUFFINGTON,
JOHN B. MCPHERSON,
United States Circuit Judges.

Mr. KINGSBURY. I suggest that the opinion of the Supreme Court in the case reported under the title of *United States* v. *Reading Company*, 226 United States Reports, beginning at page 324, be deemed in evidence, in view of the reference to it in the mandate, with liberty

to any party to refer to any portion of the opinion without transcribing the same in full in the record in this case.

I also offer in evidence from the printed record the plan and agreement for the reorganization of the Philadelphia and Reading Railroad Company and Philadelphia and Reading Coal and Iron Company, dated December 14, 1895; the statement rendered by the Reading Company to the committee on stock list, New York Stock Exchange, dated March 24, 1897, with the schedules thereto annexed; and the opinion of the attorney general of Pennsylvania, 25
dated January 2, 1897, contained in the same pamphlet.

It is stipulated that this exhibit need not be transcribed in the minutes, and that either or any party may put into the printed record such extracts therefrom as they desire.

Pamphlet marked "Exhibit No. 4."

Counsel for the Government reads in evidence from the printed 26
record in the Supreme Court of the United States of the United States *v.* Reading Company and others the following portions from the testimony:

All testimony of W. A. Lathrop contained in volume 2, on pages 44, 45, and 46, and the following extracts on pages 47, 52, 73, and 74.

Mr. REYNOLDS. As counsel for the defendants I represent, I interpose no objection on the ground that the record is not a verity and is not sufficiently proved. I do reserve the right to meet the excerpts offered by the Government by other excerpts offered by the defendants, or to call the same witnesses in contradiction of the testimony offered by the Government.

It is understood that this statement and reservation applies to all of the defendants.

In addition, counsel for the Lehigh Coal and Navigation Company reserve the right to object to the testimony of Mr. Lathrop in so far as it affects the Lehigh Coal and Navigation Company on the ground that the Lehigh Coal and Navigation Company was not a party to the former proceeding, and Mr. Lathrop being dead.

W. A. LATHROP, a witness for the plaintiff, having been duly sworn, 27
was examined as follows:

Direct examination by Mr. McREYNOLDS:

Q. Please state your age, residence, and occupation.

A. My age is 54; I am president of the Lehigh Coal and Navigation Company; my home is in Wilkes-Barre, Pa.

Q. How long have you been president of the Lehigh Coal and Navigation Company?

A. Since March, 1907.

Q. Who was your predecessor?

A. Lewis A. Riley.

Q. Is he living?

A. Yes, sir.

Q. Where is he?

A. He lives in Philadelphia.

Q. How were you associated with the company before you became its president?

A. I was not associated with it.

Q. What had been your occupation before that time?

A. For some five or six years before that I was president of the Pennsylvania Coal and Coke Company, a bituminous company.

Q. Had you never been connected with the anthracite coal business
28 prior to your going to the Lehigh Coal and Navigation Company?

A. Yes, sir. Between 1889 and 1901 I was general superintendent of the Lehigh Valley Coal Company—had charge of its mines.

Q. Is the Lehigh Coal and Navigation Company a Pennsylvania corporation?

A. Yes, sir.

Q. Organized under the general or a special act?

A. Under a special act.

Q. How many collieries has it?

A. Ten.

Q. Where are they located?

A. Located in the southern coal field, in Carbon and Schuylkill Counties.

Q. About what has been its production of coal during the last three years?

A. It produced last year, in round figures, three millions of tons, and the two or three years before that, my recollection is, about two and a quarter millions of tons.

Q. What system of railroad serves these collieries?

A. The New Jersey Central and the Philadelphia and Reading.

Q. Do both of these railroads reach the same collieries in any instance?

A. No. The Lehigh Coal and Navigation Company owns the Pan-
29 ther Creek Road and delivers to both of these roads.

Q. Where does the Panther Creek road connect with the New Jersey Central?

A. At Hauto.

Q. Where does it connect with the Philadelphia and Reading?

A. At Tamaqua.

Q. Does the Panther Creek road serve all the collieries of your company?

A. All that are operated by the company; yes.

Q. How do you distribute your trade between the two roads, the New Jersey Central and the Philadelphia and Reading?

A. We distribute it in accordance with our ability to sell the coal in these different markets.

Q. Do you sell coal in New York?

A. Yes, sir.

Q. How do you distribute that tonnage between these two roads?

A. That all goes by the New Jersey Central.

Q. Why?

A. The shortest and most direct route. It is bound to that road by agreement of lease with the Lehigh and Susquehanna, which also belongs to the Lehigh Coal and Navigation Company.

Q. You are bound up to the New Jersey Central during that lease?

A. Yes, sir.

Q. What is the nature of the lease?

A. You asked me to bring the lease. Here is a copy of it. 30

(Witness produced copy of agreement between the Lehigh Coal and Navigation Company and the Central Railroad Company of New Jersey, dated June 28, 1887.)

Q. Give us your understanding of this.

A. The coal destined for markets on that road is bound for shipment on that line.

* * * * * * *

Q. The Lehigh Coal and Navigation Company owns the Lehigh and Susquehanna Railroad Company, does it?

A. Yes, sir.

Q. Some years ago that road was leased to the New Jersey Central Railroad Company, was it not?

A. Yes, sir.

* * * * * * *

Q. What does the Lehigh Coal and Navigation Company get as the lessor in this lease to the New Jersey Central?

A. It gets a cash rental named in the lease.

Q. Are the rates of freight from your collieries over the Philadelphia and Reading Railway Company and the New Jersey Central Railroad Company to tidewater at New York Harbor the same? 31

A. We have no rates by the Reading to tidewater at New York Harbor.

Q. They do not quote you rates at all?

A. No, sir; we do not go that way. It would be a roundabout way.

Q. There is nothing to hinder you going that way if you wanted to, is there?

A. No; except the fact that there is no reason why we should.

Q. If they should give you a less rate than the New Jersey Central you would go there very quick, would you not?

A. I think we would; yes, sir.

Q. It is entirely possible to send all the freight from your collieries to the New York Harbor over the Philadelphia and Reading Railroad, is it not?

A. Yes, sir; there is no physical reason why it should not be done.

Q. You would do it if you got a rate that was inducive to that end?

A. I think so, if there was nothing in the lease to prevent it.

Q. What proportion of the output of the Lehigh Coal and Navigation Company is sent to tidewater at New York?

A. I can not answer that. This is a round figure. I do not recall it, but I should say a little more than half of it.

* * * * * * *

Q. You stated about half of your output came to New York
32 Harbor?

A. I think a little more than half; yes, sir.

Q. Speaking generally, where does the rest of your output go?

A. It is shipped to various points along the lines between the mines and tide, and some of it goes to New England by rail, and some goes over the Lehigh and Hudson, and some of it goes to Philadelphia, and some of it goes to points on the canal. We own a canal in connection with this property.

* * * * * * *

Q. Who is your principal competitor in the New York market?

A. I do not know that there is any principal competitor. We are competitors of every other of the large interests who ship coal here.

Q. Give us some of them.

A. The Lehigh and Wilkes-Barre Coal Company, the Philadelphia and Reading Coal and Iron Company, the Delaware, Lackawanna and Western Railroad Company, the Lehigh Valley Railroad Company, the Ontario and Western Railroad Company, and the Erie. Those are among the principal ones.

* * * * * * *

Q. Your company owns and operates all the collieries in the southern coal field lying between the Lehigh River on the east and Tamaqua on the west?

A That is right.

Q. What railroad property in that section is owned and operated
33 by the Lehigh Coal and Navigation Company?

A. The Panther Creek road.

Q. With what railroad system does this Panther Creek Railroad, operated by your company, connect, and at what points?

A. It connects at Tamaqua with the Philadelphia and Reading, and at Hauto with part of the Jersey Central system.

Q. Are all of your collieries reached by this Panther Creek Railroad?

A. All but one.

Q. Which one?

A. No. 307. That is directly on the Nesquehoning Valley Railroad, which is in the Jersey Central system.

Q. Does your company own substantially all the coal lands lying in the coal region west of the Lehigh River and east of Tamaqua?

A. Yes.

Q. As I understood you when on the stand before, your company ships a good deal of coal by way of Tamaqua and then over the Philadelphia and Reading to Philadelphia and other points along the system?

A. Yes; the points reached by that road.

Q. The Philadelphia and Reading Railroad reaches collieries lying in the southern coal field to the west of Tamaqua, does it not?

A. Yes.

Q. In transporting coal from these collieries does it come up to 34
Tamaqua and then go south over the line of the Philadelphia and Reading?

A. The coal from these collieries? I do not know whether all our coal goes to Tamaqua and from there to delivery points on the Reading System.

Q. Your coal bound to Philadelphia goes over what line?

A. Going by way of Tamaqua?

Q. Yes.

A. I do not know that I can tell you. The Reading Company handles it as best suits them. It goes over their system.

Q. It goes first to Tamaqua?

A. Yes.

Q. And there it is delivered to the Reading System?

A. They handle it.

Q. They handle it by way of Reading, and from there to Philadelphia?

A. I suppose so. I do not know how they handle it.

By Mr. SCHAPERKOTTER:

Q. You do not know?

A. No; I have no concern in knowing, as long as it gets to desti- 35
nation.

By Mr. MCREYNOLDS:

Q. Is there a joint rate between the Philadelphia and Reading and the Panther Creek road for coal going to Philadelphia from your colliery?

A. No.

Q. The rate over the Reading then begins at Tamaqua?

A. At Tamaqua.

Q. Is there a joint rate between the Panther Creek road and the Central of New Jersey for coals moving from your colliery to points along the New Jersey Central line?

A. No; we deliver it at Hauto.

Q. And there the rate begins?

A. There the rate begins.

Subject to the same arrangement, counsel for the Government reads from the same source testimony of William H. Richmond, contained in volume 2, at pages 264, 265, and 266, as follows:

WILLIAM H. RICHMOND, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. TODD:

Q. Will you give your present address and occupation?

36 A. My residence is Scranton, 2425 North Main Avenue.

Q. And your occupation? You are a retired anthracite operator?

A. A retired coal operator.

* * * * * * *

By Mr. TODD:

Q. Without going into further detail, can you name as of, say 1880, the railroads which were then serving the anthracite fields?

A. The Delaware, Lackawanna and Western, and the Erie Railroad, through the Pennsylvania Coal Company, served the Lackawanna field at that time.

* * * * * * *

Q. When I asked you what railroads were serving the anthracite fields in 1880, I did not mean the northern field exclusively, but all of them, so far as you have information respecting them.

A. The Lehigh Valley was doing so and the New Jersey Central; the Reading Railroad, I think. I do not recall now any others particularly.

Also the testimony of Charles E. Henderson, volume 4, pages 542, 543, 598, and 600, as follows:

CHARLES E. HENDERSON, having been duly sworn, was examined as follows:

By Judge CAMPBELL:

Q. Where do you at present reside?

37 A. Talbot County, Maryland.

Q. You are now retired from active business and are simply a plain farmer?

A. Yes, sir.

Q. Not in too much detail, kindly give us a general idea of your railroad experience connected with the subject of conducting transportation, accounting, and traffic, prior to your being connected with the Philadelphia and Reading Coal and Iron Company?

A. My first experience in railroad business was clerk at the station at Fort Scott, Kansas, on the Missouri River, Fort Scott and Gulf Railroad, in 1870. Next after that I was chief clerk to the general freight and passenger agent of the same road. Next after that I was chief clerk for the general superintendent of the same road. This general superintendent was also superintendent of the Leavenworth, Lawrence and Galveston Railroad, at Kansas City, Missouri. During the time I was chief clerk I was in charge of the accounting department of the Leavenworth, Lawrence and Galveston Railroad. When I left there I was prospecting routes for the line that is now the Kansas City and Memphis Railroad, part of the Rock Island road. Next after that I was general freight and passenger agent of the Atchison and Nebraska Railroad. After that I was auditor and cashier of the Indiana, Bloomington and Western Railroad, at Indianapolis, Indiana. After that I was assistant general manager of the same road, in charge of its whole business, the president being 38
located in New York. For eleven years I was general manager of the same. Intervening between the time I was general manager of that road, I was receiver of the same road. I was incidentally, however, at the same time manager of both roads. I was general manager of the Ohio Southern Railway for twelve years. On reorganization after the receivership of the Indiana, Bloomington and Western Railroad, I was general manager of the reorganized company, the Ohio, Indiana and Western. That covers my railroad career up to the time that I came east as general manager of the Philadelphia and Reading Coal and Iron Company in December, 1889.

Q. So that from 1870 down to date you have been continuously in the railroad service and during that period covering all its branches?

A. Yes, sir.

Q. Of what departments of the business of the Philadelphia and Reading Coal and Iron Company were you placed in charge when you came here in December, 1889?

A. I was in charge of its mining operations and of its sales.

* * * * * * *

Cross-examination:

Q. So that we may understand the situation, let us suppose that the Lehigh Valley Railroad reduced its freight charges to New York Harbor from the anthracite coal mines to a dollar and a quarter. 39
Would it be necessary for the Philadelphia and Reading to reduce its?

A. I would think that it ought to do so, in justice to the operators on the line of its road.

Q. If it did not do so, what would be the effect on the Philadelphia and Reading road?

A. I think that the operator would suffer a loss and perhaps his colliery would cease to do business and the Reading Railroad would finally lose his traffic, as a result thereof.

Q. All these coals, in other words, were in competition at New York Harbor and the one that could sell cheapest, you think, would get the business, and the freight rate would determine who could sell the cheapest, probably; is that right?

A. The first part of that question I will answer. The one who could sell the same goods at the least price would get the greater share of the business, up to his power to produce. As to the next part of the question, I would like to hear it again.

(Question read.)

A. The tendency of the freight rate, being lower in the one case, would be to enable the person who had the benefit of the lower rate to sell it cheaper.

Q. In 1898, 1899, and 1900, what roads did you regard as competitors of the Philadelphia and Reading Railway Company for the carrying of anthracite coals from the mines to tide at New York?

40 A. I did not regard any road as a competitor of the Philadelphia and Reading Railway for the carrying of the coal on the line of the Reading Railway. I did regard all of them as competitors in the market for the sale of coal, after being carried there. These other roads had no access to the mines on the lines of the Philadelphia and Reading Railway, and it was impossible for them to carry it.

Q. You mean that they were not competitors in the sense that they could not carry the same carload of coal?

A. Yes.

Q. But they were carrying similar coals from a near-by region, were they not?

A. Yes; they were competitors in the market, but not competitors for the carriage of this particular coal that was on the line of the Reading Railway; competitors in the market in New York for the sale of coal.

Q. They were all carrying coals from the same general region to New York for sale in competition?

A. Competition of market, yes.

Q. Which roads were engaged in that?

A. All of them.

Q. Name them, please, for 1898, 1899, and 1900.

A. Delaware, Lackawanna and Western; Lehigh Valley; Central Railroad of New Jersey; Pennsylvania Railroad; the Delaware and Hudson; New York, Ontario and Western.

Also testimony of A. T. Dice, in volume 4, pages 625, 626, 645, 646, 41
651, 652, and 653:

AGNEW THOMPSON DICE, called on behalf of the Philadelph' . and Reading Railway Company, having been duly sworn, was examined as follows:

By Judge CAMPBELL:

Q. You are now the general superintendent of the Philadelphia and Reading Railway Company?

A. I am.

Q. And also of various affiliated companies which, while maintaining a separate and independent organization from the Philadelphia and Reading Railway Company, are affiliated on account of a major interest of the Reading company in their share capital, and form part of the so-called Reading System?

A. I am general superintendent of the system of the Philadelphia and Reading Railway and affiliated lines.

Q. How long have you been general superintendent?

A. Since the 1st of May, 1903.

Q. I would thank you to state to the gentlemen your previous experience in railways in a brief, general way. It is not necessary to go down into great detail.

A. I began work with the Pennsylvania Railroad in July, 1881, on an engineering corps and served in various capacities with that company until 1892. I was then a supervisor on the Pennsylvania Railroad. I left there the 1st of January, 1892, and went with the 42
New York Central, as superintendent of signals, and installed the interlocking and block system on the New York Central. left there April 1st, 1894, and was appointed superintendent of the Atlantic City Railroad, which is one of the Reading lines. On the 1st of February, 1897, I was appointed superintendent of the Shamokin division of the Philadelphia and Reading Railway, and on May 1st, 1903, I was appointed general superintendent, which position I now hold.

Q. You are entirely familiar with the whole system of the railway company and its affiliated lines, their geographical situation, and so on, I suppose?

A. I am.

* * * * * * *

Q. There is another point, as to the comparison between the anthracite rate and the bituminous rate, to which your attention has

not been called. The Philadelphia and Reading Railway System was primarily built as an anthracite road, was it not?

A. It was absolutely so.

Q. It had no other business except what has developed in the growth of business?

A. That is correct.

Q. So that primarily the capital expense and general expenses of all yards and mines, and the general maintenance of the tracks
43 themselves had to be provided for in the revenue derived from the transportation of anthracite coal?

A. That is true.

* * * * * * *

Cross-examination:

Q. To what road does the Philadelphia and Reading Railway deliver most of the anthracite coal as a connecting line which is shipped on through rates?

A. The New York Central.

Q. At what point?

A. At Newberry Junction. It is the extreme northwestern part of our system. It is in the northern central part of Pennsylvania.

Q. Where do most of the coals delivered to the New York Central at that point go?

A. That is distributed throughout New York State. It goes to Buffalo Junction, and it is there transhipped for the West, and a great deal of it is loaded in box cars at the collieries and delivered to the New York Central at Newberry Junction for distribution through the entire West and Canada.

* * * * * * *

Q. How far is it to New York Harbor from the weighing scales on the lines of the Philadelphia and Reading Railway most distant from that point, and what are the weighing scales?

A. At St. Clair and at Cressona and at Tamaqua are the scales that we weigh what we term the eastern coal. We have scales at Shamokin and at Mahanoy Plane, but we do not weigh any eastern
44 coal on those scales.

Q. Which one of those scale points, Tamaqua, St. Clair, or Cressona, is farthest from New York?

A. Tamaqua and St. Clair are nearly the same distance from New York.

Q. What is that distance?

A. You mean, of course, via the route the coal takes?

Q. Via the route you take.

A. About one hundred and sixty miles to Port Reading.

Q. How far is Cressona?

A. Cressona is about a hundred and fifty-two miles.

Q. The lines of what other systems connect with those of the Philadelphia and Reading Railway in the coal region?

A. We have at Tamaqua a connection with what are really the tracks of the Lehigh Coal and Navigation Company, but are operated by the Central Railroad of New Jersey. North of Tamaqua we have at Tamanend a connection with the Central Railroad of New Jersey, and they operate over our tracks from Tamanend to Silver Brook Junction, a distance of about five miles, and over that five miles of tracks they haul their coal that is produced in the Audenried district, in the Lehigh region. Those are the only connections we have with other lines in the coal region.

Also testimony of John F. Auch, in volume 4, pages 667, 679, 680, 45
and 681, as follows:

JOHN F. AUCH, having been duly affirmed, was examined as follows:

By Judge CAMPBELL:

Q. What is your present occupation?

A. General freight agent, Philadelphia and Reading Railway.

Q. I would like you to begin at the beginning and trace down your connection with the business of the Philadelphia and Reading Railway Company, briefly, but fully enough to cover your experience and knowledge.

A. I first entered the employ of the Philadelphia and Reading Railroad Company in 1875 in the capacity of telegraph operator, and served in that capacity until 1879. I was then appointed station agent and served in the capacity of station agent from 1879 until 1884, and in 1884 entered the general freight department, and have continued consecutively in that department up to the present time.

* * * * * * *

Cross-examination by Mr. MCREYNOLDS:

Q. Does the Philadelphia and Reading Railway Company transport bituminous coal from the Beech Creek and Clearfield districts to tidewater?

A. Yes, sir. 46

Q. At what point are such coals delivered to tide?

A. It is delivered to the Central Railroad of New Jersey at Tamanend or Hauch's Switch and transferred by the Central Railroad of New Jersey from that point to tidewater.

By Judge CAMPBELL:

Q. Do you not want to follow that up by saying that we carry coal from that district by our own road to Port Reading?

A. I do not know whether there is any bituminous coal originating on the Beech Creek that goes by our own road to Port Reading. I do not know that there is bituminous coal that goes to Port Reading coming from other sections.

Q. You do know, at all events, that there is bituminous coal from the Beech Creek that is carried on our own rails to Port Richmond in Philadelphia?

A. Yes, sir.

By Mr. McREYNOLDS:

Q. Where do those coals from the Beech Creek and Clearfield districts come on to the line of the Philadelphia and Reading?

A. At Newberry Junction.

Q. What road delivers them to you at that point?

A. New York Central.

Q. How far from Newberry Junction is it to the mines?

A. I do not know. I should say the distance varies from fifty to a
47 hundred miles.

Q. How far do you carry those coals over the lines of the Philadelphia and Reading road from Newberry Junction to Port Richmond in Philadelphia?

A. Two hundred and four miles.

Q. What is the rate on those bituminous coals from the Beech Creek and Clearfield district?

A. I do not know.

Q. It is quite possible to transport all that coal to New York Harbor over the lines of the Philadelphia and Reading Railway without turning it over to the Central Railroad of New Jersey, is it not?

A. I do not say that it is physically impossible. I think, however, that the question would be determined largely by the facilities which might be furnished at Port Reading.

Q. Do you know how far it is from the mines in the Clearfield region to New York Harbor by way of Newberry Junction, Tamanend, and thence via the tracks of the Central Railroad of New Jersey?

A. Approximately the distance from Newberry Junction to tidewater via Tamanend, in connection with the Central Railroad of New Jersey, is two hundred and forty miles. Assuming that the distance from the mines to Newberry Junction is fifty miles, we should add fifty miles to that, and if it is a hundred, add a hundred.

48 Also testimony of George F. Baer, volume 5, pages 1160, 1161, 1185 to 1187, inclusive; also page 1201 to page 1204, inclusive; also pages 1207 and 1208; also pages 1219 to 1221, inclusive, as follows:

GEORGE F. BAER, having been duly sworn, was examined as follows:

By Judge CAMPBELL:

Q. You are president of the defendants, the Reading Company, Philadelphia and Reading Railway Company. Philadelphia and Read-

ing Coal and Iron Company, the Central Railroad Company of New Jersey, the Lehigh and Wilkes-Barre Coal Company, and the Temple Iron Company?

A. I am.

Q. You are a lawyer?

A. I was, and I suppose I am still.

Q. Prior to 1870 and subsequently you were a practicing lawyer?

A. Yes.

Q. Were you professionally connected with the Philadelphia and Reading Railroad Company in times past?

A. My connection with the old Reading Railroad Company began in 1870. I was first employed as counsel in Berks County, and then gradually I became one of the counsel who was called in confidentially under the Gowen administration, and when Mr. Corbin became president I became a director and continued to serve as one of the counsel. I was on the executive committee during the Corbin administration. 49
When Mr. McLeod became president, I resigned as a director and ceased to have any relation with the administration other than as local counsel and counsel designated at times to try particular cases; what I mean by that, I no longer sustained any confidential relation to the management of the railroad. After the receivership in 1893 I was again called in as advisory counsel to the receivers and became a director again, I think in the election of 1893 or 1894, I do not remember which, and I continued in that relation until April, 1901, when I was made president of the reorganized companies.

* * * * * * * *

* * * In December, 1900, I happened to be in New York, and I was told that the gentlemen who controlled the New Jersey Central were tired of it, and that the stock was for sale. I was also told that the Baltimore & Ohio Railroad had made an offer for this stock, which the parties had refused, because they considered it too small. This information was a great surprise, and I at once went to Mr. Morgan, who was a voting trustee of the Reading Company, and told him that the situation was most alarming; that it would be the ruin of the Reading property if an antagonistic company got control of the Jersey Central, or if the Baltimore & Ohio got us by the throat in that way and could control our terminals into New York, and that therefore the matter called for prompt action. I told him then 50
that I always thought that the Jersey Central could be legally bought; that the limitations in the laws of New Jersey applied only to leasing, and that under the powers of the Reading Company and under the statutes of New Jersey we could undoubtedly buy a majority of the stock. He told me to keep my own counsel, and look up the whole subject, and see what could be done. I came home, and I made a critical and careful examination of the reports of the New Jersey

Central Railroad for a number of years, to see what, in my judgment, its stock would be worth, taking into account the future possibilities. I also took up the question of how we could buy it and finance it. I made a report to Mr. Morgan in about a week's time. It took me a good while to get all the information I got, because I had to do it secretly, you know, as counsel. I sent it to Mr. Morgan, and it was such a long letter that he did not read it until in a few days I called his attention to it, and then he picked it up and read it in the evening, after business hours. When I got home, one night in Reading, there was a call at the telephone, and I went to the phone, and Mr. Morgan was there, telling me to come to New York immediately; that I must come on at once about that Jersey Central business. I went to New York the next morning. I saw Mr. Morgan, and told him that if he thought the financial plan was sound and he could
51 back it—it involved that collateral trust mortgage, you know, and the borrowing of money—that I would be responsible for the rest of it; that I thought it was sound. He said to me, "What do you think is the fair price?" I said, "I have named what I think is the fair price in there." He called for Mr. Baker, who was the chairman of their committee, or a leading man in it. Mr. Baker came over and we sat down and dickered for about five minutes, until Mr. Baker said they would take one hundred and sixty, and I said I thought I would advise that, and I went to the phone and called up Mr. Welsh and Mr. Harris, who were, with myself, a majority of the executive committee, and they said "Yes," and the deal was closed. That is the whole story. We did not even make a writing about it. Mr. Baker said he would undertake himself and with Mr. Maxwell and friends to deliver us a majority of the stock. I do not know what further I can say about it.

* * * * * * *

Cross-examination by Mr. McREYNOLDS:

* * * * * * *

Q. You were counsel for the parties interested in reorganizing the Reading Company after the receivership of 1896, as I understand?

A. Receivership of 1893?

52 Q. Yes, sir; the receivership of 1893. The reorganization took place in 1896.

A. Yes, final reorganization.

Q. Prior to that receivership of 1893, is it correct that the Philadelphia and Reading Railroad Company owned all the stock of the Philadelphia and Reading Coal and Iron Company?

A. Yes, excepting that which was required to qualify directors.

Q. Who now owns all of the shares of the Philadelphia and Reading Coal and Iron Company?

A. The Reading Company owns it, with the exception of such shares as are necessary to qualify directors.

By Judge CAMPBELL:

Q. Subject to the liens?

A. That is understood. What do you mean by that?

Q. It is pledged?

A. I know it is pledged. Its stocks are all pledged in the general mortgage.

By Mr. MCREYNOLDS:

Q. What else does the Reading Company own?

A. What do you mean—in the way of stocks?

Q. Yes, sir; or anything else. I ask you only generally, of course, not to go into detail.

A. The Reading Company owns the stock of the Philadelphia and Reading Railway Company; it owns the stock of the coal and iron company; it owns the stock of the Reading Iron Company; and it owns the stock of quite a number of subsidiary railroad companies. 53
The list is given in our annual report.

Q. Does it own any railroad equipment?

A. The Reading Company owns the equipment.

Q. What equipment?

A. The rolling equipment—what we call the rolling equipment—and leases it. Both the railroad equipment and the marine equipment was owned by the Reading Company, and it leased that equipment to the Reading Railway Company.

Q. Prior to the receivership of 1893, did the Philadelphia and Reading Railway Company own its own equipment?

A. Yes, sir.

Q. When the reorganization took place, a new railroad company was formed under the laws of Pennsylvania, called the Philadelphia and Reading Railway Company?

A. Yes.

Q. And that company took over what property from the receivers?

Judge CAMPBELL. Not from the receivers; from the purchasers.

By Mr. MCREYNOLDS:

Q. Whatever the arrangement was?

A. The Philadelphia and Reading Railroad Company was foreclosed on a mortgage, and the property was purchased by a committee representing the security holders, a reorganization committee. The real estate of the Coal and Iron Company was also sold, because it 54
was included in the general mortgage. The Reading Railroad Company and the Coal and Iron Company were joined in a mortgage. The franchises of the Coal and Iron Company were not sold, because we wanted to preserve them. The receivers also sold the property

under a decree that was not covered by the mortgage, and the purchasers bought that in, and then we reorganized the whole system by making the Reading Company the holding company, and the railroad properties were transferred to the new Reading Railway. The coal properties were reconveyed to the Coal and Iron Company, whose franchises had not been disturbed, and the iron properties, which the old railroad company owned, were transferred to the Reading Iron Company, which was also an iron company. All the stock, practically, except to qualify directors, was owned by the Reading Railroad Company. The four great companies, therefore, were: The Reading Company, the holding company; the Philadelphia and Reading Railway Company, taking the railroads over subject to prior liens and mortgages; the Coal and Iron Company, to whom the coal property was again conveyed, its debts being paid; the Reading Iron Company, which was not affected and not sold out in the foreclosure—it was an independent company—and the stock simply was sold, and then the iron properties, of which there were not very many of any value, which all formerly belonged to the rail-
55 road company, were conveyed to the Reading Iron Company.

Q. So that the result now is that the coal properties have their title in the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. The iron properties have title in the Reading Iron Company?

A. Yes, sir.

Q. And the Philadelphia and Reading Railway Company owns the tracks and rails——

A. And the terminals.

By Judge CAMPBELL:

Q. And leasehold?

A. And leasehold.

By Mr. McREYNOLDS:

Q. That formerly belonged to the Philadelphia and Reading Railroad Company?

A. Yes, sir.

Q. And the Reading Company owns the equipment?

A. The Reading Company owns the equipment.

Q. And leases it to the railroad company?

A. Yes, sir.

Q. Why was this changed arrangement made when that receivership was closed up? Why did not the railroad company take over the property of the coal company and hold it as it formerly did? Why was this holding company interposed?

56 A. For purposes of convenient financing, and for the purpose of creating securities to meet the reorganization plan. The old stock-

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olders and bondholders of the Reading Railroad Company had to contribute certain amounts of money, and it was thought wise to reorganize the whole system in this way. It was a financial reason primarily. The Reading Company then created the securities, and created a collateral trust mortgage.

Q. Could not that have been done with the railroad?

A. No, it could not have been done under our laws. The railway company could not have held under a reorganization.

Q. Why?

A. Because there was no statutory power.

Q. It did hold under the old system?

A. I know, but when we reorganized we had to accept the provisions of the new constitution, which prohibits that.

* * * * * * *

By Mr. McReynolds:

Q. What fixes the freight rates for the Reading Road?

A. It is hard to tell what fixes the freight rate. It is fixed by long custom. They have never been changed in my administration. The cost of transportation, the cost of assembling the coal, the cost of terminal facilities—all those things—competitive conditions fix rates.

Q. Do competitive roads have anything to do with it?

A. Certainly, in certain districts they have—in all districts. You 57
can not have a different freight rate, for example, to New York Harbor, where there are many roads coming in together. You have to meet their competitive freight rate. The explanation I gave this morning covers that.

Q. What do you regard as the competitors of the Philadelphia and Reading now in New York Harbor, as to anthracite coal?

A. All of the companies.

Q. Won't you be good enough to name them for us?

A. All the companies that ship to New York. They would be the Pennsylvania Railroad, the Lehigh Valley, the Delaware and Lackawanna, the Delaware and Hudson, the Erie, Ontario and Western. I guess those are all the roads leading to New York directly or indirectly.

Q. Those roads are all carrying anthracite coal to the New York Harbor?

A. Yes, sir.

Q. And you regard them as competitors who must be considered in fixing rates?

A. Yes, sir; unquestionably.

Q. When you first knew the Lehigh and Wilkes-Barre Coal Company, what business was it engaged in?

A. The mining and selling of coal.

Q. What territory did it sell its coals in?

E IN CENTER

58 A. Its territory was limited to the East. The explanation of that is this: Some agreement in the lease of the Lehigh and Susquehanna Railroad to the Central Railroad of New Jersey requires the coal, with the exception of twenty-five per cent, produced by the Lehigh Navigation Company, to be sent over the Lehigh and Susquehanna Railroad, because it is in the nature of a partnership. The Lehigh and Susquehanna earnings are divided between the Lehigh Navigation Company and the Central; and there was a collateral covenant in one of the agreements by which the coal tributary to the Jersey Central, that it could control in all its corporations, should be sent over this road as far as it was possible. So the Lehigh and Wilkes-Barre territory is a confined territory. It ships no coal West.

Q. It does to all the eastern markets?

A. Yes, sir.

Q. Ships coal to New York Harbor?

A. Yes, sir.

Q. And to New England points?

A. Yes, sir.

Q. And has been engaged in that business since 1890?

A. Ever since I knew the company; 1890, yes—1901 when I first took control of it.

Q. Is it engaged in the same business now?

A. Yes.

59 Q. Prior to 1901 were the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Company competitors as sellers of coal in New York Harbor?

A. Yes; and they are to-day.

Q. And generally throughout the eastern territory they were competitors at that time?

A. Yes, sir; through that northern territory. Not in this territory, nor in the southern.

* * * * * * *

Q. Does the Lehigh and Wilkes-Barre Coal Company pay dividends?

A. No.

Q. Has it ever?

A. Not in twenty-five years, I guess.

Q. Does the Jersey Central advance it money from time to time?

A. Not now. The Jersey Central many years ago took the control of the Lehigh and Wilkes-Barre and had to guarantee mortgages, and advanced large sums of money. That was before our acquisition of the Lehigh and Wilkes-Barre. The Lehigh and Wilkes-Barre of late years has been paying off some of the advances that the Jersey Central made from time to time.

Q. As the president of the Central Railroad Company of New Jersey, you seem to have signed its answer in the equity cause wherein the United States was complainant and the Central Railroad Company of New Jersey and others were defendants, commonly known as the commodities clause. There are some things in the answer that I want to ask you about, to bring out the facts. You can answer whether that is true or not. I ask you if you did not do that? 60

A. Yes.

Q. In that answer it is said, "This defendant alleges that throughout its corporate existence the transportation of coal from the anthracite coal fields of Pennsylvania has constituted its principal business and the chief source of its earnings." Do you understand that to be the fact?

A. I should think so. It transports the coal of the Lehigh and Wilkes-Barre and it transports the coal of the navigation company. I suppose at the time that was supposed to be correct.

Q. That was about a year ago?

A. Yes, sir. I think that was a general statement. I think that was so. It was prepared with a good deal of care.

Q. I call your attention (and the stenographer may copy it later) to the portion of this answer beginning with paragraph 12, and ask you to state whether the facts stated there are in harmony with your present understanding, and if so, the stenographer will copy it in as part of the record.

A. I think that is a fair statement of the facts referred to.

(The paragraph in the answer above referred to is as follows:) 61

This defendant, further answering, says that anthracite coal is an article of prime necessity and is universally used for domestic purposes throughout New England and the Middle Atlantic States, and to a great extent throughout other sections of the country. The source of the entire supply, save a few small deposits of inferior quality, is located within the State of Pennsylvania, and the deposits extend over an area of only about 484 square miles, divided for trade purposes into three "regions," the Wyoming (sometimes called the Lackawanna) region, the Lehigh region, and the Schuylkill region. Ninety per cent, approximately, of the entire unmined area of anthracite coal is owned or controlled by the following-named companies or by "subsidiary coal companies," so-called; that is, companies in which they have an entire or controlling stock interest, viz, the Reading Company, the Pennsylvania Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware and Hudson Company, the Erie Railroad Company, and the New York, Ontario and Western Railroad Company, and from seventy to seventy-five per cent of the annual supply of anthracite coal in the United States is and for many years past has been produced either directly by said companies, as in the case of the Delaware, Lackawanna and Western Railroad, the Delaware and 62

Hudson Companies, or through the agency of the said "subsidiary" coal companies.

The entire distribution of anthracite coal in and into the different States of the Union and Canada for the year 1905, the latest normal year in which there was no strike, and for which complete statistics are at hand, was as follows:

	Tons.
New England States	8,692,504
New York	18,125,419
New Jersey	7,212,341
Supply coal to railroads	4,643,426
Southern States	2,080,088
Western States	6,904,314
Canada	2,187,450
Other foreign countries	42,533
Pacific coast	1,743
Pennsylvania	11,520,383
Total	61,410,201

Approximately four-fifths of this entire production of anthracite coal was transported in interstate commerce over the railroads named from Pennsylvania to markets in other States and Canada. Approximately the same proportion of the entire production of anthracite coal has been so transported from Pennsylvania to other States and
63 countries for many years before 1905, and ever since. The total output of anthracite coal for the year 1906 was 55,698,595 tons. That for the year 1907 exceeded 68,000,000 tons. That part of the output of anthracite not consumed in the State of Pennsylvania is carried chiefly to tidewater at New York Harbor and is thence transported by water and by railroad to points in New England and the Middle Atlantic States, where the great bulk of the anthracite output is consumed. New York Harbor is the principal distributing point for anthracite coal.

Also testimony of William R. Taylor, contained in volume 2, pages 188 to 199, inclusive, as follows:

WILLIAM R. TAYLOR, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. What is your residence and occupation?

A. I reside at 6445 Drexel Road, Philadelphia, and I am the secretary of the Reading Company, and also vice president.

Q. How long have you been secretary of the Reading Company?

A. Since 1902. Previous to that time I had been secretary, before some changes were made. I have been vice president of the company since 1897.

Q. What connection have you with the Philadelphia and Reading Railway Company?

64 A. I am secretary.

Q. How long have you been such secretary?

A. Since its organization, in 1896.

Q. What connection have you with the Philadelphia and Reading Coal and Iron Company?

A. Vice president. I think I was made one of the vice presidents of the Philadelphia and Reading Coal and Iron Company in 1897.

Q. What connection had you with the Philadelphia and Reading Railroad Company?

A. I was secretary of the Philadelphia and Reading Railroad Company from 1886 up to the time of the foreclosure, in 1896.

Q. What connection, during the years from 1886 to 1896, did you have with the Philadelphia and Reading Coal and Iron Company?

A. No connection whatever.

Q. What is the par value of the shares of the Reading Company?

A. Fifty dollars a share.

Q. And of the Philadelphia and Reading Railway Company, and of the Philadelphia and Reading Coal and Iron Company?

A. Each $50 a share.

Q. What part of the capital stock of the Philadelphia and Reading Railway Company is owned by the Reading Company?

A. All of the capital stock of the railway company is owned by the Reading Company.

Q. That stock is hypothecated, is it not, with some trust company? 65

A. It is deposited with the Central Trust Company of New York, as trustee of the general mortgage of the Philadelphia and Reading Railway Company.

Q. To secure these mortgage bonds?

A. Yes, sir.

Q. Does the stock stand on the books of the Philadelphia and Reading Railway Company in the name of the Central Trust Company of New York?

A. Yes, sir.

Q. At the stockholders' meetings of the Philadelphia and Reading Railway Company, how is that stock voted?

A. By proxy given by the Central Trust Company of New York and the Reading Company jointly.

Q. What do you mean by that?

A. The proxy is executed by the Reading Company and the Central Trust Company of New York, as trustee.

Q. You mean the proxy is executed by those parties jointly?

A. Yes, sir.

Q. Who has held that proxy?

A. The president of the Philadelphia and Reading Railway Company, for the time being; Mr. Harris, when he was president of the Philadelphia and Reading Railway Company, and Mr. Baer since that time.

66 Q. At all meetings of the Philadelphia and Reading Railway Company since 1896 the president of the Reading Company has held the proxy to vote the shares?

A. The president of the Philadelphia and Reading Railway Company; yes, sir.

Q. And the president of the Philadelphia and Reading Railway Company and the president of the Reading Company has been the same individual?

A. Yes, sir.

Q. Who owns the share capital of the Philadelphia and Reading Coal and Iron Company?

A. The Reading Company.

Q. In whose name do those shares stand on the books of the coal company?

A. In the name of the Central Trust Company of New York, trustee.

Q. How are those shares voted at the stockholders' meetings of the coal company?

A. By proxy executed by the Central Trust Company and the Reading Company jointly.

Q. And who has held that proxy since 1896?

A. The president of the Philadelphia and Reading Coal and Iron Company.

Q. And the president of the Philadelphia and Reading Coal and Iron Company during all these years has been the same person who was the president of the Reading Railway Company and of the

67 Reading Company, has he not?

A. Yes, sir.

Q. Are dividends paid on the capital stock of the Philadelphia and Reading Railway Company?

A. Yes, sir.

Q. To whom are they paid?

A. Paid to the Reading Company.

Q. When did the Philadelphia and Reading Railway Company begin to pay dividends upon its capital stock to the Reading Company?

A. I am not sure that I can give the date. I think it was about 1902.

Q. Have such dividends been paid each year since that time?

A. Yes, sir.

Q. Can you tell us what those dividends have been?

A. For the last two years, I think, they have been at the rate of 30 per cent. Previous to the last two years, I think 20 per cent.

Q. For how long?

A. I am not sure that they paid 20 per cent. I think 15 per cent was the first.

Q. And then they were increased to 20?

A. Yes, sir.

Q. And then increased to 30?

A. Yes, sir. 62

Q. During the last two years the dividends have been 30 per cent?

A. Yes, sir.

Q. Are dividends paid on the capital of the Philadelphia and Reading Coal and Iron Company?

A. No, sir.

Q. Have any dividends ever been paid on the share capital of that company?

A. No, sir.

Q. What do its annual statements show in the way of profits or loss? I mean of the Philadelphia and Reading Coal and Iron Company?

A. The Philadelphia and Reading Coal and Iron Company, for the year ending June 30, 1908, showed sufficient income to pay to the Reading Company interest on the amount that stands on the books of the Reading Company against the Philadelphia and Reading Coal and Iron Company, amounting to about $80,000,000, at the rate of 2 per cent, and it had a small surplus beyond that.

Q. For the years prior to the year 1908, what was the showing as the result of the year's work?

A. The Philadelphia and Reading Coal and Iron Company has been able to pay to the Reading Company interest on that sum that I mentioned from the year 1902, I think it is.

Q. At the rate of 2 per cent?

A. No; they began at 1½ per cent, and then 1¾, and reached 2 per 69 cent; and 2 per cent has been the highest.

Q. Is that $80,000,000 in the form of bonds?

A. No, sir.

Q. What shape is it in?

A. It is a charge on the books of the Reading Company against the Philadelphia and Reading Coal and Iron Company.

Q. For money advanced upon account?

A. Money that had previously been advanced by the old Philadelphia and Reading Railroad Company, which was carried over in the reorganization.

Q. Do I understand that the old Philadelphia and Reading Railroad Company advanced out of its treasury to the Philadelphia and Reading Coal and Iron Company a sum amounting to eighty millions of dollars?

A. No, sir. The present $80,000,000 does not represent all of those advances that had previously been made by the Philadelphia and Reading Railroad Company, because since the reorganization, the coal company's bonds out at the time of the reorganization, amounting to $12,000,000, have been replaced by general mortgage bonds of the Reading Company, and the Reading Company has, therefore, charged against the coal company a corresponding amount.

Q. Prior to the reorganization and the formation of the Reading Company the old Philadelphia and Reading Railroad Company had
70 advanced at least $80,000,000 out of its treasury to the Philadelphia and Reading Coal and Iron Company?

A. No; as I explained, the amount was not eighty millions of dollars at that time. I think at the time of the rorganization the amount due by the coal company to the old Philadelphia and Reading Railroad Company was probably sixty-eight or seventy millions of dollars.

Q. And the rest is made up by this $12,000,000 bond transaction which you have just explained?

A. Yes, sir.

Q. When did the Reading Company acquire the shares of the Philadelphia and Reading Coal and Iron Company?

A. They were transferred to the Reading Company by Messrs. Coster and Stetson at the time of the foreclosure sale of the property of the Philadelphia and Reading Railroad Company in 1896.

Q. Do you know when the Philadelphia and Reading Railroad Company first acquired the shares of the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir. At the time of the organization of the Philadelphia and Reading Coal and Iron Company, in 1871.

Q. Did it acquire all the shares of the coal company at that time?

A. Yes, sir.

Q. And held them until the time they were sold out in 1896 under the receiver's proceeding?

71 A. Yes, sir.

Q. Has the Philadelphia and Reading Coal and Iron Company ever paid a dividend since 1870?

A. No, sir.

Q. On the statement showing the collieries along the lines of the Philadelphia and Reading Railway Company there are certain columns headed "Weigh scale" and "Manifesting point." What is the meaning of that term "weigh scale"?

A. I am not sufficiently familiar with that to say.

Judge CAMPBELL. The various weight scales on the lines of the Philadelphia and Reading Railway Company are the points to which laden cars of coal are carried from the various collieries over

its various lateral lines. There these cars are weighed and afterwards put in course of transportation to destination in trains. The manifesting point is where the billing is done, where the bills of lading and the shipping receipts showing the ownership of the property while it is in transit are made out.

By Mr. McREYNOLDS:

Q. Does the Reading Company or the Philadelphia and Reading Railway Company own stock in any anthracite coal company except the Philadelphia and Reading Coal and Iron Company?

A. The Philadelphia and Reading Railway Company does not 72
own stock in any coal company at all. But the Reading Company has an interest in some of the subsidiary companies of the Philadelphia and Reading Coal and Iron Company, such as the Fulton Coal Company, the Mammoth Vein Coal and Iron Company, the Locust Gap Improvement Company, the Preston Company, and probably a few others. As far as the Philadelphia and Reading Railway Company is concerned, it has no interest in any coal company.

Q. What is the relationship between the Reading Company and the Reading Iron Company?

A. The Reading Company is the owner of all the capital stock of the Reading Iron Company.

Q. What business is the Reading Iron Company in?

A. The manufacture of pipe, large machinery, cotton presses, etc.

Q. Where are its works located?

A. At Reading, Pa.

Q. What is its capital stock?

A. A million dollars.

Q. How long has it been in operation there?

A. It has been in operation as the Reading Iron Company, I think, since about 1883 or 1889; but it has been in existence, under different ownership, for probably thirty-five years.

Q. Was all the stock of the Reading Iron Company owned by the old Philadelphia and Reading Railroad Company?

A. Yes, sir. This stock has been deposited by the Reading Company with the Central Trust Company of New York as trustee of its general mortgage.

Q. What is the relation between the Reading Company and the 73
Port Reading Railroad?

A. The Reading Company is the owner of all the capital stock of the Port Reading Railroad Company.

Q. Where is the Port Reading Railroad?

A. The Port Reading Railroad runs from a point near Bound Brook, N. J., to Port Reading, a point on the Kill von Kull.

Q. Port Reading is a tidewater port on the New York lower bay?

A. Yes, sir.

Q. Port Reading Junction is the point near Bound Brook, from which the road starts, is it not?

A. Yes, sir.

Q. How long is the line of this Port Reading Railroad?

A. I am not sure I can give you the mileage of it.

Q. Give us approximately.

A. I should say between 25 and 30 miles.

Q. When was this road constructed?

A. I should say in 1890 or 1891.

Q. By what company was it constructed?

A. It was promoted by the Philadelphia and Reading Railroad Company.

Q. And constructed in the name of the Port Reading Railroad Company, was it?

A. Yes, sir.

74 Q. Is the Port Reading Railroad Company a New Jersey corporation?

A. Yes, sir.

Q. Was all of the stock of the Port Reading Railroad Company owned by the Philadelphia and Reading Railroad Company?

A. Yes, sir.

Q. From the time it was organized until the time it was sold out under the receiver's proceedings in 1896?

A. Yes, sir.

Q. And since 1896 all the stock of that railroad company has been held by the Reading Company?

A. Yes, sir.

Q. Where is the stock of this Port Reading Railroad Company now? Has it been hypothecated, or is it held in the treasury of the Reading Company?

A. A million five hundred thousand dollars of that stock has been deposited with the Central Trust Company of New York as trustee of the Philadelphia and Reading Railway Company's general mortgage, and in the neighborhood of $500,000 worth of stock has been deposited with the Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee of the Reading Company's Jersey Central collateral trust loan.

Q. Am I right in concluding from what you have said that the Philadelphia and Reading Railroad Company originally furnished all the money for the construction of this Port Reading Railroad?

75 A. Yes, sir; at the time of the foreclosure all the stock of the Port Reading Railroad Company had not been issued. I think a million and a half had been issued then. Since that time the Port Reading Railroad Company has delivered to the Reading Company

the $500,000 of stock to represent advances that had not been represented by the stock previously.

Q. Since the organization of the Port Reading Railroad Company in 1890 who have been its presidents?

A. The president has always been identical with the president of the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Railway Company.

Q. Have the operating officers been the same as the operating officers of the Philadelphia and Reading Railroad Company?

A. Practically.

Q. What has been the arrangement between the two corporations in reference to through shipments of freight?

A. I am not familiar with that.

Q. Were you the secretary of the Philadelphia and Reading Railroad Company at the time this Port Reading Railroad Company was projected and constructed?

A. Yes, sir.

Q. What was the purpose of its construction?

A. To furnish the Philadelphia and Reading Railroad Company with an outlet to New York Harbor.

Q. Since the construction of this Port Reading Railroad Company 76
has it been operated as a part of the system of the Philadelphia and Reading Railroad Company and of the Philadelphia and Reading Railway Company?

A. Practically; yes, sir.

Q. And utilized by it for the purpose of sending through freight to tidewater and New York Harbor?

A. Yes, sir.

Q. Can you describe to us the general course over which coal carried by the Philadelphia and Reading Railway Company moves from the coal regions in Pennsylvania to tidewater at New York Harbor?

A. It would not be from any accurate knowledge that I have on that subject. I could give you just general information that I have.

Q. Please do so.

A. The coal comes down the main line, which is from the vicinity of Pottsville, generally to a point on the main line near Bridgeport, and there it either crosses the river and goes by the Plymouth branch to the junction with the North Pennsylvania Railroad at Jenkintown, or else it goes all the way to Philadelphia, and goes by way of Wayne Junction and thence to the North Pennsylvania Railroad, and over the North Pennsylvania Railroad to the middle of the Delaware River, Yardley, and there it goes on the Delaware and Bound Brook Railroad, which is a leased line of the Philadelphia and Reading Railway Company, and proceeds to Port Reading Junction and thence to Port 77
Reading at tide.

Q. What do you mean by the North Pennsylvania Railroad?

A. The North Pennsylvania Railroad is one of the Philadelphia and Reading Railway Company's leased lines. The Plymouth Railway is also.

Q. What dividends are paid by the Reading Company to its stockholders?

A. The Reading Company pays 4 per cent per annum on all of its issues, being first preferred, second preferred, and common stock.

Q. How long has it paid 4 per cent?

A. It paid 4 per cent on its common stock, I think, since 1904, and on the second preferred probably a year or two previous to that, and on the first preferred for a longer period.

Q. What are the sources from which the Reading Company derives its income?

A. Principally from its investment in the securities of other corporations. It has some income from real estate it owns, but that is not very large.

Q. What is the principal corporation from which it derives its income?

A. From the Philadelphia and Reading Railway Company.

Q. What proportion of its income is derived from the Philadelphia and Reading Railway Company?

78 A. I do not know that I can give you the percentage. I should say that it was at least 75 per cent.

Q. Were you connected with the National Company at the time when its name was changed to the Reading Company?

A. Yes, sir; I was the secretary of that company.

Q. Were you connected with that company when it was called the Excelsior Enterprise Company?

A. No, sir.

Q. You were secretary of the National Company at the time its name was changed to the Reading Company?

A. Yes, sir.

Q. What was its business at that time?

A. The National Company at that time merely kept up its organization, held its annual meetings regularly, and elected officers every year.

Q. It had no other business except to preserve its organization?

A. That is all.

Q. How long had that condition of affairs existed with the National Company before its name was changed to the Reading Company?

A. Our experience with the National Company was in connection with the lease of the Delaware and Bound Brook Railroad, which was in 1879. Among the assets of the Delaware and Bound Brook Rail-

road Company that we received in connection with the lease we acquired the stock of the National Company.

Q. Then, from 1879 until its name was changed to the Reading 79
Company, the National Company had no business except to preserve its organization?

A. I will not say it had no business. I say that is all it did.

Q. Did it own any property?

A. I believe there were some securities of some old railroads that it had been interested in previously.

Q. That were substantially worthless?

A. That had no value.

Q. Do you remember what the capital stock of the National Company was?

A. Fifty thousand dollars.

Q. Did it pay any dividends?

A. No, sir.

Q. Who was its president?

A. At the time of the reorganization?

Q. Yes.

A. Mr. Joseph S. Harris.

Q. And had its president always been the president of the Philadelphia and Reading Railroad Company?

A. Yes, sir.

Q. You were the secretary of the Reading Company when it acquired 145,000 shares of the capital stock of the Central Railroad Company of New Jersey in January of 1901, were you not?

A. I am not sure that I was secretary at the time, but I was the 80
vice president.

Q. You were either vice president or secretary?

A. Yes, sir.

Q. Who negotiated that purchase?

A. Mr. George F. Baer, I think.

Q. Do you remember the price paid for those shares of the Central Railroad Company of New Jersey?

A. $160 a share.

Q. How did the Reading Company get the money to pay that purchase price?

A. The Reading Company sold its issue of $23,000,000 Central Railroad Company of New Jersey collateral trust bonds and certain shares of first and second preferred stock, I think.

Q. And the shares which it acquired in the Central Railroad Company of New Jersey were hypothecated to secure those bonds?

A. Yes, sir.

Q. Were those shares of the Central Railroad Company of New Jersey acquired by an exchange of these securities or were the securi-

ties sold in the market and the cash paid to the holders of the shares of the Central Railroad Company?

A. The stock of the Central Railroad Company was purchased for cash.

Q. The Reading Company still owns these 145,000 shares of Cen-
81 tral Railroad Company of New Jersey stock?

A. Yes, sir.

Q. How are those shares voted in the stockholders' meetings of the Central Railroad Company of New Jersey?

A. By a proxy given by the Pennsylvania Company for insurances on lives, etc., as the trustee, executed jointly with the Reading Company as the beneficial owner.

Q. Who has held that proxy?

A. Mr. Baer, the president.

Q. Are dividends paid on these shares of the Central Railroad Company of New Jersey?

A. Yes, sir.

Q. To whom?

A. To the Reading Company.

Q. What interest has the Reading Company in the equipment used by the Philadelphia and Reading Railway Company?

A. The Reading Company is the owner of all the equipment, subject to a pledge of a large part of that equipment with the Central Trust Company of New York, as trustee of its general mortgage.

Q. You mean by that, do you, that the Reading Company owns all the engines and cars which are operated by the Philadelphia and Reading Railway Company?

A. Yes, sir.

Q. What is the arrangement between the Reading Company and the Philadelphia and Reading Railway Company in reference to that equipment?

82 A. The railway company pays a fixed rental for the use of that equipment to the Reading Company.

Q. Has that been the arrangement which has existed between the Reading Company and the Philadelphia and Reading Railway Company since 1896?

A. Yes, sir.

Q. You were connected with the Philadelphia and Reading Railroad Company at the time the Port Reading Railroad Company took a lease of the Jersey Central Railroad Company, were you not?

A. Yes, sir.

Q. Do you know whether about that same time a contract was made by the Lehigh and Wilkes-Barre Coal Company agreeing to sell its output of coal to the Philadelphia and Reading Coal and Iron Company?

A. I know there was some contract made at that time, but I do not recall the nature of it.

Q. Have you access to those records?

A. Yes, sir.

Q. If there is such a contract, will you produce a copy of it and make it "Government Exhibit No. 142" to your deposition?

A. Yes, sir.

Q. About this same time do you know whether the Philadelphia and Reading Railroad Company took a lease of the Lehigh Valley Railroad Company's lines?

A. Yes, sir.

Q. Do you remember the date of that? 83

A. February, 1892, I think it was.

Q. What became of that lease?

A. That lease was surrendered in August, 1893.

Q. What became of the lease that was taken by the Port Reading Railroad of the Central Railroad of New Jersey?

A. That was dissolved, I think, in December, 1892.

Q. That was subsequent to the decree by the chancellor in New Jersey, holding that it was contrary to law?

A. Yes, sir.

(The witness subsequently furnished a copy of the contract dated April 30, 1892, between the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company, referred to in his testimony, and it was introduced in evidence, marked "Government Exhibit No. 142.")

Cross-examination by Judge CAMPBELL:

Q. You answered that you were vice president of the Philadelphia and Reading Coal and Iron Company, as well as an official of the railway company and of the Reading Company. State whether or not as such vice president you have any active duties whatsoever in connection with the conduct of the business of the Coal and Iron Company other than to execute documents in the name of the company when advised by counsel that they are required in the conduct of the business of that company?

A. That is all.

Q. Referring to the Port Reading Railroad Company, do you not 84
recall that while its construction was promoted by the Philadelphia and Reading Railroad Company for the purposes which you indicate, of gaining an outlet on the New York waters for our business, that in point of fact the stock of that company was subscribed for by the Port Reading Construction Company?

A. Yes, sir.

Q. And that the Port Reading Construction Company negotiated a series of bonds provided for the Port Reading Company which were

negotiated, and out of which it provided the means for constructing that railroad?

A. Yes, sir.

Q. And that in the meantime, and until after the surrender by the Port Reading Company of its lease of the properties of the Central Railroad Company of New Jersey, that stock never was held or owned by the Philadelphia and Reading Railroad Company?

A. I had forgotten that.

Q. The gentleman's question led you to say, which of course you did not mean to say, that the traffic of the Philadelphia and Reading Railroad system destined to and from points in New York Harbor is confined to the line of the Port Reading Railroad. State whether or not the fact is that no other traffic proceeds over the Port Reading Railroad except coal traffic.

85 A. Of course, that is what I understood he referred to.

Q. Your general merchandise and other freight traffic, besides anthracite and bituminous coal, proceed to New York Harbor over the lines of the Central Railroad Company of New Jersey from Bound Brook Junction to Jersey City?

A. Yes, sir.

Q. Also all the passenger traffic interchanged between the two companies that goes west of Bound Brook?

A. Yes, sir.

Q. The Philadelphia and Reading Railway Company also has an outlet over the lines of the Central Railroad of New Jersey at Allentown?

A. Yes, sir.

Q. Over which large quantities of traffic of bituminous coal and general merchandise are interchanged?

A. Yes, sir.

Q. And passenger traffic?

A. And passenger traffic.

Q. The Philadelphia and Reading Railway system, through its leased line, the North Pennsylvania Railroad, has another connection with the lines of the Central Railroad Company of New Jersey at South Bethlehem, through which all sorts of traffic, freight and passenger, are interchanged?

A. Yes, sir.

Q. The Philadelphia and Reading Railway system has another connection through its Catawissa Railroad leased line, with the lines

86 of the Central Railroad of New Jersey at Tamanend?

A. Yes, sir.

Q. Where traffic is also interchanged?

A. Yes, sir.

Q. The gentleman has inquired about the dividends actually paid on the various issues of shares of the Reading Company. Your answers are somewhat confusing. Please prepare a statement showing the time of the beginning of the payment of dividends on each class of its stock from time to time up to the present, and attach this statement to your answer as an exhibit.

A. I will look this up and furnish the information requested.

(The witness furnished the following statement:)

Statement of dividends paid by Reading Company.

Calendar year.	First preferred stock ($28,000,000).	Second preferred stock ($42,000,000).	Common stock ($70,000,000).
	Per cent.	*Per cent.*	*Per cent.*
1900	3		
1901	4		
1902	3		
1903	4	1½	
1904	4	4	
1905	4	4	3½
1906	4	4	4
1907	4	4	4
1908	4	[a] 4	4

[a] Of this, 2 per cent is payable November 10, 1908.

Q. Referring to the National Company, concerning which the gentleman made some inquiries, are you familiar with the old records of that company? 87

A. Generally; yes, sir.

Q. You had occasion to examine into them very carefully about 1896?

A. Yes, sir.

Q. That company had been actively engaged in the construction of a line of railroad in New Jersey for some years?

A. Yes, sir.

Q. For some years prior to the 1st day of January, 1874?

A. Yes, sir.

Q. Are you familiar with the consideration that was given to that subject preparatory to its taking over the business now conducted by the Reading Company in respect of its vitality prior to the adoption of the constitution of 1874?

A. I know that. The charter was examined by counsel for the company and the question submitted to the attorney general of the State of Pennsylvania and a decision rendered by him on the subject.

Q. Which was to the effect that it was a proper corporation?

A. Yes, sir; and had been properly conducted ever since its organization.

Q. As the result of that investigation, did the Commonwealth of Pennsylvania exact the payment of a large sum of money as a bonus
88 on the increase of its capital stock under our statutes?

A. It did, and the money was paid.

Q. Referring now to the surrender by the Port Reading Railroad Company of the lease of the Central Railroad Company of New Jersey and to your answer to the gentleman, I ask you if you can recall that after the interlocutory injunction and decree of the court an appeal was taken by the defendants in that suit to the Appellate Court of New Jersey?

A. I have some recollection of that; yes, sir.

Q. And do you not recall now, since I refresh your recollection, that as a fact it was determined not to prosecute that appeal, but on account of the Port Reading Railroad Company's inability as a business proposition to pay the rental secured by that lease it voluntarily surrendered the property?

A. Yes, sir.

Redirect examination by Mr. McReynolds:

Q. You were asked about the Port Reading Construction Company, which in a practical way constructed the Port Reading Railroad. Who owned the stock of the Port Reading Construction Company?

A. My impression is that was controlled by the Philadelphia and Reading Railroad Company.

Q. And the money that was used in constructing that Port Reading Railroad Company was supplied by the Philadelphia and Reading Railroad Company?

A. Yes, sir.

89 Q. Do you know the arrangement which exists between the Philadelphia and Reading Railway Company and the Central Railroad Company of New Jersey, under which the former company sends the freight from Bound Brook, N. J., to Jersey City?

A. Yes, sir. There is a traffic contract executed between the two companies.

Q. And freight is shipped under that traffic contract?

A. Yes, sir.

Q. On through bills of lading?

A. The agreement provides for that; yes sir.

Q. The Philadelphia and Reading Railway Company, I presume, pays so much annually or a certain part of the freight received for the use of the tracks of the Central Railroad of New Jersey from Bound Brook to Jersey City?

A. I do not remember just what the details of the agreement are, but it is in the form of a contract which had been made by the old

North Pennsylvania Railroad Company before its property had been leased to the Philadelphia and Reading Railroad Company.

Q. That arrangement has existed how long?

A. I think that contract is dated 1876.

Q. Under that contract its freight has moved over the tracks of the New Jersey Central Railroad east from Bound Brook since 1876?

A. Yes, sir.

Q. How long does that contract continue? 90

A. I do not remember that it has any period to expire. I think it would expire by mutual consent of the parties. I am not sure just what the terms are.

Q. Where can that contract be found?

A. We have copies of it at the office.

Q. Will you be good enough, through Judge Campbell, to submit that contract to us so that we may, if so advised, put it on the record?

A. I will do so.

By Judge CAMPBELL:

Q. The interchange of traffic over the rails of the Jersey Central and Reading, North Penn, and Bound Brook is governed by another contract called a "new-line" contract, in which the Baltimore and Ohio Railroad Company is a party, which governs the interchange of traffic over these lines to and from the lines of the Baltimore and Ohio?

A. Yes, sir.

Also testimony of William G. Browne, contained in volume 2, pages 200 to 208, inclusive, as follows:

WILLIAM G. BROWNE, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Please examine the Government Exhibits Nos. 24 to 29, inclusive, 91 and put in the record a statement showing which of the shares of the coal companies mentioned therein are owned by the Philadelphia and Reading Coal and Iron Company.

A. The shares of the Locust Gap Improvement Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Central Trust Company of New York, trustee; G. F. Baer, Joseph S. Harris, James M. Landis, W. J. Robinson, Thomas M. Richards, and E. F. Smith, are owned by the Philadelphia and Reading Coal and Iron Company.

The shares of the Fulton Coal Company, standing in the names of the following parties, are owned by the Philadelphia and Reading Coal and Iron Company, namely: The Central Trust Company of

New York, trustee; the Fidelity Insurance Trust and Safe Deposit Company, trustee; George F. Baer, Joseph S. Harris, James M. Landis, W. J. Robinson, Thomas M. Richards, E. F. Smith, and H. A. Wallace.

The shares of the Delaware Coal Company, standing in the names of the Central Trust Company of New York, trustee; the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Philadelphia and Reading Coal and Iron Company, George F. Baer, William G. Brown, Joseph S. Harris, C. E. Henderson, James M. Landis, William H. McEwan, W. J. Robinson, Thomas M. Richards, E. F. Smith, Theodore Voorhees, and H. A. Wallace, are owned by the Philadelphia and Reading Coal and Iron Company.

92 The shares of the Preston Coal and Improvement Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; George F. Baer, C. E. Henderson, J. S. Harris, James M. Landis, W. H. McEwan, W. J. Robinson, Thomas M. Richards, E. F. Smith, and H. A. Wallace, are owned by the Philadelphia and Reading Coal and Iron Company.

The shares of the Tremont Coal Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Central Trust Company of New York, trustee; George F. Baer, Joseph S. Harris, C. E. Henderson, James M. Landis, W. H. McEwan, W. J. Robinson, Thomas M. Richards, E. F. Smith, and H. A. Wallace, are owned by the Philadelphia and Reading Coal and Iron Company.

The shares of the Mammoth Vein Coal and Iron Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Central Trust Company of New York, trustee; George F. Baer, C. E. Henderson, James M. Landis, the Philadelphia and Reading Coal and Iron Company, Thomas M. Richards, W. J. Robinson, E. F. Smith, and H. A. Wallace, are owned by the Philadelphia and Reading Coal and Iron Company.

By Judge CAMPBELL:

Q. The gentlemen have made you in your testimony contradict the record, which shows the legal title of those various shares to be in the names of those in whom they stand registered on the books of the company. I take it that you mean that the beneficial or equitable ownership of those shares is the property of the Philadelphia and Reading Coal and Iron Company?

93

A. Yes, sir.

By Mr. MCREYNOLDS:

Q. You have said that the beneficial ownership of the various stocks that you have been referring to was in the Philadelphia and

Reading Coal and Iron Company. Who votes the stock at a stockholders' meeting of these several companies?

A. They are voted by proxy. The president of the company, Mr. Baer.

Q. Who issues that proxy?

A. Generally speaking, the parties who hold the legal title give proxies to Mr. Baer, and he votes them.

Q. Do any of these coal companies pay dividends?

A. Yes, sir.

Q. Who collects the dividends?

A. The Philadelphia and Reading Coal and Iron Company receives the dividends.

Q. These statements, Government Exhibits Nos. 24 to 29, show when the stock in the several companies was acquired. Do these statements refer to the original acquisition by the Philadelphia and Reading Coal and Iron Company?

A. They represent the date at which it was transferred to the parties in whose name it stands.

Q. And at some date prior to that time it was acquired by the 94
Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

(The witness produced a statement showing when the Philadelphia and Reading Coal and Iron Company acquired its interest in the major portion of the share capital of the several companies in question. It is as follows:)

Statement of the Philadelphia and Reading Coal and Iron Company showing the dates when it acquired its interest in the major portion of the share capital of the companies below named.

FULTON COAL COMPANY.

(Share capital, 71,219 shares.)

	Shares.
February 3, 1872	
February 10, 1872	51,234
	51,303

LOCUST GAP IMPROVEMENT COMPANY.

(Share capital, 59,291 shares.)

February 10, 1872	1,[illegible]7
March 12, 1872	40,[illegible]
April 17, 1872	3,859
June 1, 1872	1,500
	47,[illegible]

TREMONT COAL COMPANY.

(Share capital, 120,000 shares.)

February 10, 1872	[illegible]13,[illegible]9

95 MAMMOTH VEIN COAL AND IRON COMPANY.

(Share capital, 69,000 shares.)

	Shares.
February 10, 1872	10,713
March 12, 1872	34,500
	45,213

DELAWARE COAL COMPANY.

(Share capital, 5,268 shares.)

June 30, 1874	4,716

PRESTON COAL AND IMPROVEMENT COMPANY.

(Share capital, 60,000 shares.)

January 27, 1872	500
January 29, 1872	83
February 10, 1872	51,675
	52,258

Q. You have furnished a statement of the number of acres of land in the anthracite region leased and subleased by the Philadelphia and Reading Coal and Iron Company and other companies to third parties?

A. Yes, sir.

Q. Are those third parties corporations or individuals with which the Philadelphia and Reading Coal and Iron Company, or the Reading Company, or the Reading Railway Company have no connection, or are they other companies in which one of those three owns an interest?

A. I think they are principally other people, individuals and cor-
96 porations, in which the Reading Coal and Iron Company has no interest.

Q. Do those leases contain a provision that all the coal mined out of those lands shall be shipped over the lines of the Philadelphia and Reading Railway Company?

A. Yes, sir.

Q. Do they contain provisions concerning the sale of the coal by those lessees?

A. No, sir.

Q. In order to have the record complete, state whether the statements which you have given us show the ownership of all stock in anthracite coal companies by the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. Does the Reading Company itself own any stock in any anthracite coal company?

A. I am not connected with the Reading Company. I can not tell you.

Q. You do not know?

A. No, sir.

Q. Is all the coal purchased by the Philadelphia and Reading Coal and Iron Company produced in what is known as the Schuylkill region?

A. Yes, sir; on the lines of the Philadelphia and Reading Railway Company.

Q. But the Philadelphia and Reading Railway Company's lines 97
go into the Lehigh region, do they not?

A. No; they may touch the Lehigh region, but all the coal that is mined by the Philadelphia and Reading Coal and Iron Company is considered as Schuylkill coal and coming from the Schuylkill region.

By Judge CAMPBELL:

Q. But not necessarily from Schuylkill County?

A. No, sir; not necessarily.

By Mr. MCREYNOLDS:

Q. Is all the coal that is purchased by the Philadelphia and Reading Coal and Iron Company produced in the Schuylkill region?

A. Yes, sir.

Q. Do you know the route which coal shipped by the Philadelphia and Reading Coal and Iron Company to New York Harbor takes in its passage to that point?

A. From general information I do; yes.

Q. Does it all go to Port Reading Junction in New Jersey, and from thence by the Port Reading Railroad to Port Reading on the New York Harbor?

A. Yes, sir.

Q. What is the freight rate paid by the Philadelphia and Reading Coal and Iron Company on coal shipped by it to New York Harbor from the collieries?

A. On prepared sizes, $1.95 per ton.

Q. What is the rate to Port Reading? 98

A. The rate to Port Reading is $1.95.

Q. How long has it been paying that rate?

A. For a number of years to my knowledge.

Q. Give us, so far as you can remember it, since 1900.

A. Yes, sir.

Q. Is not the rate which you have given, $1.95, to New York, what is called alongside the wharves?

A. Yes, sir; f. o. b. alongside at Port Reading. From the harbor vessels alongside at Port Reading.

Q. Do you pay the same rate of freight on coal shipped to Port Reading, New York Harbor, upon the coals taken from all the collieries which are operated by the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. Do you pay the same rate of freight upon all coal purchased by the Philadelphia and Reading Coal and Iron Company?

A. Yes, sir.

Q. And shipped to Port Reading?

A. Yes, sir; that is a published tariff rate.

Q. And applies to all collieries from which the Philadelphia and Reading Coal and Iron Company either purchases coal or from which it mines coal itself?

A. Yes, sir.

Q. Does the Philadelphia and Reading Coal and Iron Company
99 ship coals to New York Harbor over the lines of any other railroad except the Philadelphia and Reading Railway Company's?

A. No, sir.

Q. Does it ship any coal to any point except over the lines of the Philadelphia and Reading Railway Company?

A. It ships coal to all points. It ships coal to connecting roads; interchanges coal at various junction points with other roads.

Q. But all the coal starts over the lines of the Philadelphia and Reading Railway Company?

A. Yes, sir.

Q. What rate of freight does the Philadelphia and Reading Coal and Iron Company pay on coal shipped to Philadelphia?

A. I am giving this from general information. Of course, I have nothing to do with the freight rates. The freight is $1.90 on coal to Philadelphia.

By Judge CAMPBELL:

Q. You are referring to prepared sizes?

A. Prepared sizes in all cases.

By Mr. MCREYNOLDS:

Q. Is the coal that is shipped by the Philadelphia and Reading Coal and Iron Company to tide water, New York Harbor, shipped on through bills of lading to Port Reading?

100 A. I believe it is.

Q. How are settlements made between the Philadelphia and Reading Coal and Iron Company and the Philadelphia and Reading Railway Company for coal shipped by the former company over the lines of the latter?

A. The Philadelphia and Reading Railway Company renders the Philadelphia and Reading Coal and Iron Company a bill.

Q. How often?

A. Weekly; weekly bills.

Q. Do checks pass between the companies?

A. Do we pay our bills by checks, do you mean?

Q. You say the Philadelphia and Reading Railway Company renders a weekly bill for freight?

A. Yes, sir.

Q. How is the bill settled?

A. We pay those freight bills monthly or on account.

Q. Do you credit them on your books, or do you send them a check?

A. We credit them on our books.

Q. So the Philadelphia and Reading Railway Company renders a weekly bill to the Philadelphia and Reading Coal and Iron Company, and the amount of those bills is credited to the railway company on the books of the coal company?

A. Yes, sir.

Q. When are final settlements made, if ever?

A. They are made almost every month. At the close of each month we settle up and pay the Philadelphia and Reading Railway Company in cash. Not invariably at the end of each month, but 101
that is when the bills are due and should be paid. Sometimes we pay them in thirty days afterwards. Sometimes sixty days.

Q. And sometimes longer still?

A. We rarely get over ninety days behind.

Q. When you pay them how do you pay them?

A. By check.

Q. Drawn on the account of the coal company?

A. Yes, sir; drawn on the banks in which the coal company has its deposit, and the check is paid to the order of the Philadelphia and Reading Railway Company.

Q. How much money every year does the Philadelphia and Reading Railway Company advance to the Philadelphia and Reading Coal and Iron Company?

A. Nothing.

Q. When did it cease to?

A. Subsequent to 1896.

Q. How long subsequent?

A. For six or seven years there have been no advances made by the Philadelphia and Reading Railway Company.

Q. Then subsequent to 1896 up to, say, 1902 the Philadelphia and Reading Railway Company did make advances every year to the Philadelphia and Reading Coal and Iron Company, did it not? 102

A. The Philadelphia and Reading Railway Company made no advances whatever. Whatever advances were made were made by the Reading Company since 1896.

Q. And not by the Reading Railway Company?

A. And not by the Reading Railway Company.

Q. Prior to 1896 was it the custom of the Philadelphia and Reading Railroad Company to make advances to the Philadelphia and Reading Coal and Iron Company?

A. I will not say that it was the custom. I have only been the secretary of the Coal and Iron Company since 1898.

Q. Were you connected with the Coal and Iron Company prior to 1896?

A. No, sir; not prior to 1898.

Q. Have you any control over the sales of coals by the coal company?

A. No, sir.

Q. What are your general duties as secretary?

A. To keep a record of the minutes of the meetings of the board, keep a statement of the books and accounts of the company, and I am the accounting officer.

Q. What is the capital stock of the Philadelphia and Reading Coal and Iron Company?

A. Eight millions of dollars.

Q. What is its bonded indebtedness?

A. It has no bonded indebtedness except one collateral trust loan of about a million two hundred and thirty thousand dollars, I think.

103 Q. What is its floating debt?

A. It has no floating debt.

Q. How is the account between it and the Reading Company carried? How do you carry it on your books? It owes the Reading Company a large amount of money, does it not?

A. Yes, sir; it owes the Reading Company about eighty millions of dollars.

Q. How is that carried on your books?

A. Ledger account—credit account.

Q. Open account?

A. Open account on the ledger; yes, sir.

Q. Has that account increased or decreased?

A. It has been decreasing.

Q. The Philadelphia and Reading Coal and Iron Company buys a large amount of coal from sundry producers, upon what are known as 65 per cent contracts, does it not?

A. Yes, sir.

Q. Do you know about how much that amounts to annually?

A. The amount of money or the amount of tons?

Q. The amount of tons.

A. About a million two hundred thousand tons.

Q. Do you keep on the books of the Philadelphia and Reading Coal and Iron Company a separate account with that coal?

A. We keep a separate account of the amount of coal we purchase from each individual, and pay for that regularly during the succeeding months.

Q. You keep a separate account showing the disposition of that 104
purchased coal?

A. No, sir.

Q. Is there anything on your books to show the result of those transactions of purchase to the company?

A. Nothing on the books of the company; no, sir.

Q. Your books do not show, then, whether these purchases make you a profit or a loss?

A. We keep a record of the kinds and sizes of this coal that we purchase, and we also keep a record of the sales of all coal.

Q. Of that particular coal?

A. All the coal that is sold direct; we keep an account of the sales. All that is not sold during the month, which goes to our different stock points, there is a record of.

Q. Is there anywhere on your books the information which would enable you to determine the result of these 65 per cent contracts to your company?

A. I make statements up that show—all the purchased coal that we do not sell during the month we consider as sold. I make a statement up on that basis, and making it up on that basis, we make a profit on the purchased coal.

Q. Do you make a profit on the purchased coal which you send to New York Harbor?

A. On our total purchased coal? I could not say with regard to New York Harbor particularly. On our total purchased coal we 105
make a profit.

Q. On the part you send to New York Harbor, what is the result?

A. I never kept a record of that which we sent to New York Harbor.

Q. You are unable to say?

A. I am unable to say.

Cross-examination by Judge CAMPBELL:

Q. You say that your official connection with the Philadelphia and Reading Coal and Iron Company does not go back of the year 1898?

A. 1898; yes, sir.

Q. Prior to December, 1896, you were in the service of the receivers of the Philadelphia and Reading Coal and Iron Company and the Philadelphia and Reading Railroad Company?

A. Yes, sir.

Q. Those receivers were appointed under the decree of this court in February, 1893. Do you recall that?

A. Yes, sir.

Q. They continued in the conduct and operation of the business under the orders and direction of this court, both companies, from 1893 to 1896, inclusive?

A. Yes, sir.

Q. Up to the 1st day of December, 1896?

106 A. Yes, sir.

Q. So that whatever may have been the relations between the two companies, or the records of the two companies, were the operations of the officers of this court—that is to say, the receivers?

A. Yes, sir.

Q. You have stated in answer to the gentlemen that the Coal and Iron Company has no funded or bonded debt, with a small exception, which you referred to. State whether or not the Philadelphia and Reading Coal and Iron Company is a joint obligor in the issue of the so-called general-mortgage Reading bonds.

A. They are.

Q. Although those obligations are not carried on the books of your company as its funded debt or obligation?

A. Yes, sir.

Q. With respect to the operations of your coal purchases, while you say the books themselves—that is to say, the formal entries on your books of account—do not immediately and directly show the result of the operations, I understand you to have stated that you keep up a continual analysis of the course of that business by memoranda and statements prepared from time to time, which show the results of all these operations to be that they have been profitable?

A. Yes, sir.

Q. These statements are prepared in your department for exhibition to the management from time to time for their information?

107 A. Yes, sir.

Q. And while they are not in form of ledger-book entries they are among the records of the papers of the company?

A. Yes, sir.

Redirect examination by Mr. McReynolds:

Q. You said a while ago that the Philadelphia and Reading Coal and Iron Company were joint obligors upon the general-mortgage bonds of the Reading Company?

A. Yes, sir.

Q. Do you know whether the Philadelphia and Reading Railway Company is also a joint obligor upon those same bonds?

A. No, sir; they are not.

By Judge CAMPBELL:

Q. In your reference to the tariff rates on coal f. o. b. you stated the tariff rate is $1.95 f. o. b. New York Harbor. Is it not a fact that by the application of a reduction of that rate the tariff rate is, in fact, $1.55 and not $1.95?

A. $1.55 would be the net tariff rate.

By Mr. MCREYNOLDS:

Q. What do you mean by the application of a reduction in the rate?

A. Allowance for discharging and other expenses in connection.

Q. Allowances to whom?

A. To the shipper.

Q. What do you mean by allowances for discharging and other 108
expenses?

A. It is printed in the regular tariff rate.

Q. Is that all specified in the printed published rate?

A. Yes, sir.

Q. So that the net rate to the shipper is what?

A. $1.55 on prepared sizes.

Q. Who else ships coal from the Schuylkill region to New York Harbor over the lines of the Philadelphia and Reading Railway Company except the Philadelphia and Reading Coal and Iron Company?

A. Sundry individual shippers.

Q. Which is the largest shipper?

A. I could not say. I am not familiar enough with that to say.

Q. Who are among the largest shippers?

A. I could not say. I do not know who are among the largest shippers.

Q. Is there anybody who ships as much as half a million tons from that region?

A. I think not.

Q. Is there anybody who ships as much as 100,000 tons from that region?

A. I am not familiar enough to say. Our coal-sales department could tell you.

By Judge CAMPBELL:

Q. You have no official or other connection or relations with those 109
independent shippers?

A. None whatever.

Q. You have no means of knowing the details of their business or any part of it?

A. No, sir.

Q. Or of the shipments made by them over the railway company?
A. No, sir.
Q. That is not in your charge?
A. No, sir. I have no familiarity with it at all.

Also testimony of William J. Richards, contained in volume 4, pages 682 to 685, inclusive, and pages 704 and 705, as follows:

WILLIAM J. RICHARDS, a witness called on behalf of the Philadelphia and Reading Coal and Iron Company, having been duly sworn, was examined and testified as follows:

By Judge CAMPBELL:

Q. What is your profession?
A. Mining engineer.
Q. Kindly give a brief general outline of your experience as a mining engineer.

110 A. I went with the Reading Coal and Iron Company in their engineering department in 1882. I remained with them in that department until 1887. I was then one year with the Susquehanna Coal Company at Shamokin. In 1888 I returned to the Reading Coal and Iron Company and was with them until 1889 at Ashland, Schuylkill County. Then I went with the Lehigh and Wilkes-Barre Coal Company as mining engineer, and was with them until 1898 as mining and chief engineer. In 1898 I was made general superintendent of the Lehigh and Wilkes-Barre Coal Company, and held that position until 1903. In 1903 I became general manager of the Philadelphia and Reading Coal and Iron Company in charge of the mining department. In 1904 I was made second vice president, and in 1907 I was made first vice president of the Reading Coal and Iron Company.

Q. In charge in each instance of the mining department?
A. Yes, sir; of the mining.
Q. Kindly give a brief general description of the several anthracite fields which have come under your observation and their special characteristics.
A. I made a statement covering briefly my ideas on that. Shall I read that?
Q. I will ask you a few preliminary questions. I wish to call your attention to that Ruley map, which has been offered in evidence. You are familiar with it?
A. Yes, sir.

111 Q. I understand this map to have been prepared under the direction of the Geological Survey?
A. The Pennsylvania State Geological Survey.

Q. The nomenclature describing the various divisions differs somewhat from our trade names, does it not?

A. Yes, sir. Generally under the geological survey the fields are known as the northern, eastern and western middle, and southern; whereas we know it generally in the trade as the Wyoming, the Lehigh, and the Schuylkill.

Q. The Wyoming field, I take it, includes the northern field, so-called?

A. The Wyoming includes the northern field.

Q. Which is in Luzerne and Lackawanna Counties?

A. Luzerne and Lackawanna Counties.

Q. The Lehigh field, as you know it in the trade, consists of what?

A. The Lehigh field consists of the territory adjacent to Hazleton.

Q. Apparently in the middle on the face of the map?

A. Yes, sir. It is composed of a number of small basins there, and generally the eastern end of the extreme southern field is classified with the Lehigh region.

Q. That part lying east of the Little Schuylkill River, I take it, the Panther Creek region, and so forth?

A. Yes, sir.

Q. Which is an extension of the Schuylkill field? 112

A. Yes, sir.

Q. I mean geographically, not geologically altogether.

A. Yes.

Q. The regions in the northern part of Schuylkill County extending northwestward to Northumberland shown on this map are marked on the map as the "western middle" and "eastern middle?"

A. Yes, sir.

Q. Now, you may proceed, if you please, to place in the record such parts of the statement you say you have prepared as will express your understanding, possibly subject to some interruption to inquire for elaboration and detail.

A. I have some remarks on the different fields. Do you want me to read that?

Q. Yes. I just simply wanted you to explain the difference of the terminology employed by the different witnesses.

A. The region producing anthracite coal has a total area of about four hundred and eighty-four square miles. It is divided geologically and geographically into three fields. The first is known as the northern or Wyoming field. The Wyoming is a basin about sixty miles long and about six miles wide at its greatest distance across. The principal companies operating within it are the Delaware, Lackawanna and Western, Delaware and Hudson, Pennsylvania Coal Company, Lehigh and Wilkes-Barre Coal Company, Lehigh Valley, 113
and the Ontario and Western. Here the coal at the deepest point in

the basin reaches a distance of two thousand three hundred feet below the surface. The second field or subdivision is the Lehigh. It is made up of a number of small basins of not very great depth. The measures are of varying inclinations, running from nearly flat to very steep pitches. The third field or subdivision is called the Southern or Schuylkill. The Schuylkill starts near Mauch Chunk on the east.

Q. That is on the Lehigh River?

A. Yes, sir. The Schuylkill starts near Mauch Chunk on the east and is very much in the shape of the letter A, with Mauch Chunk at the apex and Treverton and Lykens at the end of either leg. The southern field contains the greatest variety of coal, greater probably than all the other fields combined. It is from this field that the Lykens coals come. That coal is produced on the western end of the Schuylkill field and is a coal that is not bright but dull in luster, and is a product of the veins lying geologically lowest in the whole series. That is, this Lykens coal is produced from those veins that are the lowest in the series. In what we call the Lykens region there are four veins producing this coal. The Lorberry, Schuylkill red ash, free and hard white ash, Locust Mountain, Shamokin, and Franklin coals are all produced in this region.

* * * * * * *

114 Cross-examination by Mr. McReynolds:

Q. What is the relative cost of the production of anthracite coals in the Schuylkill region as compared with the cost of production in the Lehigh region and the Wyoming region?

A. I would not have that.

Q. You may not be able to give it to us in definite figures, but relatively which is the highest of those regions?

A. The Schuylkill region is the highest. The average of the Schuylkill would be higher than the average of the others. Of course, that is only a matter of opinion; I am not giving that as a fact.

Q. You were once connected with the Lehigh and Wilkes-Barre Coal Company?

A. Yes, sir.

Q. You are acquainted with the cost of production there?

A. Yes, sir.

Q. The mines of that company are situated in the Lehigh region?

A. There are some collieries in the Lehigh region and the balance in the Wyoming.

Q. How about the relative cost of the mines of that company, located in the Lehigh region, and the mines located in the Schuylkill region, in the cost of production?

A. I would just state that I left there about the time that these big advances in wages were taking place. 115

Q. It is the general understanding in the trade, is it not, that the Schuylkill region is the most expensive region for mining?

A. Yes, sir; but I want to give that, qualifying it, of course, as just an opinion.

Q. When you first became connected with the Philadelphia and Reading Coal and Iron Company, the sizes below pea were waste products, were they not?

A. They were shipping some buckwheat in 1882.

Q. But very little?

A. I hardly remember just exactly what they were shipping, but I do not think they were wasting very much of the buckwheat at that time.

Q. Much of the coal that is now marketable and a valuable product was then a by-product and thrown out on the culm banks, was it not?

A. Only the very small sizes.

Q. What proportion was that of the total production, do you think?

A. I should say that probably 10 per cent of what we are shipping now was then wasted.

Q. You were connected with the Lehigh and Wilkes-Barre Coal Company from 1898 to 1903?

A. 1889.

Q. 1889 to 1903?

A. Yes.

Q. At that time the coal company was owned by the New Jersey 116
Central Railroad Company?

A. No, sir; it was a separate company.

Q. But its stock was owned by the New Jersey Central Railroad Company?

A. I do not know anything about the stock.

Q. Over what lines were its coals shipped to market?

A. Over the Jersey Central.

Q. Where did they go?

A. Where did the coal go?

Q. Yes.

A. It was distributed all over the line and went down to tide.

Q. At New York?

A. Yes.

Q. Did you have to do with the selling of the coal?

A. No, sir.

Q. How were the coals sold?

A. I do not know anything about that. All I had to do with was putting the coal on the cars.

Q. Did they have an agency in New York———

A. Yes, sir.

Q. And in other States outside of Pennsylvania, for the selling of their coal?

A. They had an agency in New York.

117 Q. Were the coals shipped upon orders from New York and other points outside?

A. That I had nothing to do with.

Q. But I am asking, did you not putthem on cars?

A. Yes, sir.

Q. Did you have nothing to do with shipping them?

A. We got our orders from New York and our shipper shipped them.

Q. So the coals were put on the cars by you and moved to New York upon orders from your New York selling agency?

118 A. Yes, sir.

As to all the foregoing offers of testimony the original reservation suggested when the testimony of W. A. Lathrop was offered applies as to all the defendants.

Government's counsel also read in evidence portion of the testimony of Joseph S. Harris, now deceased, a witness in the old Reading case.

Defendants object to the admission of this testimony on the ground that the issues in the former case and incident case are not identical, and that the parties in the former case and the incident case are not identical, and on the further ground that the testimony of Mr. Harris was discredited in the former case by the court, as will appear in 183 Federal Reporter.

It is understood this objection applies to all of the defendants.

Government's counsel read the following extracts: Volume 2, pages 7, 17 to 19 inclusive, pages 35 and 36, and page 258:

JOSEPH S. HARRIS, a witness for the plaintiff, having been duly sworn, was examined, as follows:

Direct examination by Mr. MCREYNOLDS:

Q. State your age, residence, and connection with any one of the defendants.

A. My age is 72 years, my residence is Germantown, Philadelphia.

119 I have no connection with any of the defendants, except that I am a director of some of the companies. I am a director of the Philadelphia and Reading Railway Company, the Central Railroad of New Jersey, the Lehigh and Wilkes-Barre, the New York Coal Navigation Company, and a number of smaller and unimportant companies.

Q. Are you connected with the Lehigh Valley Railroad Company?

A. No, sir.

Q. Are you director in the Reading Company, the Philadelphia and Reading Railway Company, and the Philadelphia and Reading Coal and Iron Company, all three?

A. Yes, sir.

Q. When did you first become connected with the Philadelphia and Reading Railroad Company?

A. With the Philadelphia and Reading Railroad Company in 1893.

Q. In what capacity did you become connected with the Philadelphia and Reading Railroad Company at that time?

A. I was one of the receivers. I was managing receiver, and I was the president.

Q. How long did you continue to be president of the Philadelphia and Reading Railroad Company?

A. About 8 years.

Q. When did you retire from that position?

A. In March, I believe, 1901.

Q. I understand you became the president of the Philadelphia and Reading Railroad Company in 1893 and continued as president of it and its successor until 1901?

A. I did; yes, sir. 120

Q. What connection have you ever had with the Philadelphia and Reading Coal and Iron Company?

A. I was an officer of the Philadelphia and Reading Coal and Iron Company in the close of 1870, and continued in that connection—one of the engineers of the company—superintending engineer until 1877. Then I was a vice-president of the company in 1892, and I was a receiver and president of the company from 1893 to 1901.

Q. So in some capacity or other you have been connected with the Philadelphia and Reading Coal and Iron Company since the latter part of the seventies?

A. No; I was from 1877 to 1890 not connected with it at all; I was out of the service.

Q. In what service were you from 1879 to 1890?

A. I was in the service of the Central Railroad Company of New Jersey and the Lehigh Coal and Navigation Company.

* * * * * * *

Q. During the time that you were president of the Philadelphia and Reading Railroad Company, from 1893 to 1901, what were the competitive roads in the coal trade with which you came in competition?

A. We came in competition with all the roads that were carrying coal from Pennsylvania.

Q. Name the principal ones in reference to carrying coal from the 121 coal mines to the New York Harbor.

A. The Reading, the Lehigh Valley, the Central Railroad of New Jersey, the Delaware, Lackawanna and Western, the Erie, and the Pennsylvania Railroad.

Q. What determined the freight rates during that time which you put into effect over the Philadelphia and Reading Railway Company?

A. So far as I know, in our company they were determined by the company.

Q. Of course they were fixed by your board of directors, or by yourself; but what were the conditions which required you to arrive at one figure or another; what were the things which influenced you?

A. If there were ever any negotiations, they were there before my time.

Q. There was some reason, was there not, why you fixed the rate at $1.50 instead of $1.65? What were the reasons which influenced the company in fixing its rates?

A. The same thing as influenced it in fixing its freight rates on any other product.

Q. What are they?

A. What seems to be the proper charge for doing the business.

Q. What effect did the competition of these other roads have upon your rates?

A. I do not know that it had any effect. I do not think in my time the rates were ever changed.

122 Q. You had the same rate from 1893 to 1901?

A. I think so.

Q. Were the rates over the other roads the same?

A. I do not know.

Q. You advised yourself about the rates over your competitors' lines, did you not?

A. I do not know that I advised myself. I knew in general what they were.

Q. Your rates necessarily had to be governed more or less by the rates of your competitors, did they not?

A. Yes; we could not have charged very much greatly different from them. If we charged much less, we could have taken business away from them. If we had charged much more, our business would have dried up.

Q. In other words, the competitive conditions were such that you had to fix your rates at approximately what the others were?

A. Yes, sir.

Q. Just as in other cases between competing roads?

A. Yes, sir.

Q. In the years 1884, 1885, 1886, what was your position in relation to the Philadelphia and Reading Coal and Iron Company?

A. I had none.

Q. With what companies were you associated at that time?

A. I was president of the Lehigh Coal and Navigation Company.

Q. How long were you president of the Lehigh Coal and Navi- 123
gation Company?

A. From 1882 to 1893.

Q. What was the business of that company?

A. The mining of coal.

Q. Over what lines did it transport the output of its collieries?

A. Mostly over the New Jersey Central.

Q. To what points was it sent?

A. Mainly to Philadelphia and New York and territory contiguous.

Q. About how much coal was produced by the company at that time?

A. I should say roughly from eight hundred thousand to a million tons.

Q. How was its output divided between the Philadelphia and Reading Railroad Company and the New Jersey Central—what determined that division?

A. The Lehigh Coal and Navigation Company in its early history had built a railroad running from the Wyoming region to Phillipsburg, on the Delaware River, where it connected with the Jersey Central. It had leased that road to the Jersey Central, and its general arrangements were to send all the coal over the Jersey Central to New York. The coal that went to Philadelphia went over the Reading Railroad and the Belvidere branch of the Pennsylvania Railroad.

Q. The lease of that road contemplated the payment of a certain 124
per cent of the amount of freight that was sent over it, did it not?

A. Yes.

Q. Did the Philadelphia and Reading Railroad Company reach any of the collieries which were reached by the New Jersey Central system?

A. No; not any of the Lehigh Coal and Navigation Company's collieries. The Lehigh Coal and Navigation Company owned the roads that supplied its mines, and no other company went in there then, nor does any other go in now.

Q. Does the coal from those collieries come to New York now over the New Jersey Central Railroad?

A. Yes, sir.

Q. Who owned the capital stock of the Lehigh Coal and Navigation Company while you were its president?

A. Individuals.

Q. It was not owned by any railroad company or any other coal company?

A. No, sir.

Q. It was an independent in the field?

A. Yes.

Q. Did it have a selling agency of its own?

A. Yes.

Q. Did it have agents in New York?

A. Yes, sir.

125 Q. How were the prices of its coal fixed in New York?

A. Fixed by orders to the selling agents at which they should sell.

Q. Who were your competitors in this market?

A. All the people who came to the market.

Q. Do you mean all the coal companies who were mining in all these three separate fields in Pennsylvania?

A. Yes; generally that is true. Yes.

* * * * * * *

Q. In 1901 the Philadelphia and Reading Railway was operating a system which led from the coal fields in Pennsylvania to New York Harbor at Port Reading?

A. Yes, sir.

Q. And the Central Railroad of New Jersey was also operating a road which led from the same coal fields to Jersey City on New York Harbor, was it not?

A. Not from the same coal fields. The two did not carry the same coal.

Q. That was not what I asked you. I said from the same coal field. They both reached the middle coal field, did they not?

A. No; the Reading did not reach the middle coal field.

Q. Did the New Jersey Central reach the southern coal field?

A. It reached the eastern end of it; it reached the Lehigh Coal and Navigation Company's properties.

126 Q. To that extent at least they both reached the same coal field or region?

A. The territories of the two were not the same at all.

Q. You mean they were not identical, but did not the Reading reach the eastern part of the middle coal field?

A. No; it did not reach the Lehigh Coal and Navigation Company's property at all.

Q. Did not the Reading reach the middle field?

A. No, sir; it did not reach the middle field at all.

Q. It did not reach anything but the southern field?

A. No.

Q. But the Jersey Central reached the middle field?

A. Yes; and the eastern end of the southern field.

Q. So the Jersey Central and the Reading both reached the southern field?

A. Yes; they both reached the southern field.

Q. And both carried from that field over their own tracks anthracite coal to tidewater on New York Harbor?

A. Yes.

Q. And had been doing that thing for many years?

A. Yes.

Q. Both had termini upon the waters of the New York Harbor?

A. Yes.

Q. They both also were interested in coal-mining companies, were they not?

A. No; the Jersey Central was not interested in coal-mining companies. It was interested in coal mining. 127

Q. Did not the Jersey Central at that time own the Lehigh and Wilkes-Barre Coal Company?

A. Yes.

Q. Was not the Lehigh and Wilkes-Barre Company a mining company?

A. Yes, sir.

Q. Shipping over the New Jersey Central?

A. Yes, sir.

Q. And selling at New York Harbor?

A. Yes, sir.

Q. Was not the Philadelphia and Reading Coal and Iron Company mining coal and shipping it over the Philadelphia and Reading Railroad Company to New York and selling it there?

A. Yes, sir.

Q. At this time, in 1901, the Reading Company purchased in some way, the details of which you do not know, a majority of the stock of the Central Railroad Company of New Jersey?

A. Yes, sir.

Q. You say that was done for the purpose of consolidating their interests and bringing them into nearer and closer harmony?

A. I said it was done to cement the company's interests and give them a permanent outlet on the New York Harbor.

Q. Did not the Philadelphia and Reading Railroad Company have an outlet on New York Harbor for its coal long before that? 128

A. Not a satisfactory one. It was not as good as the one at Jersey City.

Q. Is not the Philadelphia and Reading Railway Company now using its Port Reading tracks for the shipping of coal?

A. Yes, sir.

Q. Has it not always used them since that road was built down from Bound Brook, N. J.?

A. Yes, sir.

Q. It had that road from Bound Brook, N. J., at the time they bought this majority of stock of the New Jersey Central, did it not?

A. Yes.

Q. And had been using it for years, had it not?

A. Several years; yes.

Q. Do you know what the Reading Company paid for that majority of stock in the New Jersey Central, how much per share?

A. No; I can not say from memory.

Q. Do you know how it was paid for? I want to know whether the Reading Company issued to the holders of that stock the securities of the Reading Company or whether it paid cash for them?

A. It made an issue of bonds. I do not know how the stockholders were paid. I know that the Reading Company made an issue of bonds to cover that; but how the stockholders were protected I do not know.

129 Q. But you do know the Reading Company made an issue of bonds and hypothecated this stock of the New Jersey Central Railroad Company to secure those bonds?

A. Yes, sir.

Q. And in that way, without going into the details of how the transaction was actually worked out, it paid for the stock of the New Jersey Central Railroad Company?

A. Yes.

Q. Who was the financial representative of the Reading Company in these transactions?

A. I do not know exactly what your question refers to.

Q. Did you not have a banker or some financial representative in New York who was managing it?

A. Yes, sir. Our banker here was J. P. Morgan & Co.

JOSEPH S. HARRIS, a witness for the plaintiff, recalled.

* * * * * * *

Direct examination by Mr. MCREYNOLDS:

Q. You told us when on the stand heretofore that you were once the president of the Lehigh Coal and Navigation Company?

A. I was.

Q. During what years were you the president of that company?

A. From 1882 to 1893.

130 Q. Did the Lehigh Coal and Navigation Company own and operate the Panther Creek Railroad Company during those years?

A. The Lehigh Coal and Navigation Company does own the Panther Creek Railroad. It uses it for carrying its coal from its mines to its breaker, and for transporting it to a point at which it delivers it to the Jersey Central. The Jersey Central operated the road for passengers and freight. The Lehigh Coal and Navigation Company only use it to assemble its coal.

Q. Was the Lehigh Coal and Navigation Company the owner of this Panther Creek road during the years from 1882 to 1893?

A. Yes, sir.

Q. And operated it during those years for the purpose of assembling its coal?

A. Yes, sir.

Q. Where did the Panther Creek road during those years connect with the Reading system?

A. At Tamaqua.

Q. Did the Lehigh Coal and Navigation Company sell coal in Philadelphia during the years 1882 to 1893?

A. Yes, sir.

Q. How were the coals that were sent to Philadelphia shipped?

A. They mostly went down the Lehigh and Susquehanna Railroad to Bethlehem, and from there down the North Pennsylvania Railroad.

Q. Is that part of the Reading system?

A. The North Pennsylvania Railroad is.

Q. Were those coals carried by the Panther Creek Railroad over to Tamaqua?

A. No, sir; the coal that was delivered to the railroad companies for transportation was all delivered at Hauto, which is a point on 131
the Panther Creek road. Hauto is the junction with the Jersey Central Railroad.

Q. At what point were the coals of the Lehigh Coal and Navigation Company, which came to Philadelphia, delivered to the Philadelphia and Reading Railway Company?

A. There was a little coal delivered to the Philadelphia and Reading. It was sent down the Jersey Central, because we were interested in the earnings of the Jersey Central.

Q. It was entirely possible to deliver those coals at Tamaqua to the Philadelphia and Reading, was it not?

A. Yes, sir; it was.

Q. The Lehigh Coal and Navigation Company owned a canal coming down in the general direction of Philadelphia, did it not?

A. Yes, sir.

Q. During the years you were president of the company some coal came to Philadelphia market over that canal?

A. It did. There was also some coal shipped from Phillipsburg by the Belvidere and Delaware, which was one of the Pennsylvania's lines, to Philadelphia.

Government's counsel also read in evidence from the record of the 132
old Reading case the following extracts from the report of the Philadelphia and Reading Railroad Company, dated November 30, 1890,

being from pages 17 and 18 of such report, and contained in volume 2 of the old record at pages 563 and 564:

"PORT READING RAILROAD.

(Pages 17 and 18:) "In another part of this report the lack of means of placing the product of your mines upon the markets and the consequent shrinkage of production in proportion to that of competing fields is commented on. A marked illustration of the necessity of providing additional facilities for the distributing of anthracite coal in New York Harbor and all tidewater points tributary thereto is found in the fact that at the time of writing this report there are more than 1,000 cars loaded with coal standing on the side tracks in Jersey City because of the lack of dock facilities for transferring the coal to vessels; and on account of the restrictions which these limitations impose upon your traffic the management is now obliged to transport coal from Port Richmond through the Delaware River and around to New York Harbor, encountering all the perils of coast navigation at this season of the year, and at an expense largely in excess of all-rail freights. With the view of meeting these wants and other disabilities
133 under which your company has labored ever since the day it opened its mines, for want of unrestricted access to the waters of New York Bay, the greatest distributing center in the country of anthracite coal, your board has determined to promote the construction of a line of road, to be under the control of your company, to extend from the vicinity of the terminus of the Delaware and Bound Brook Railroad, near Bound Brook, N. J., to deep water, in the Arthur Kill, a distance of 20 miles, at a point readily accessible to the waters of New York Bay and New England ports by large vessels. Plans have been completed for the construction of this line, with adequate terminals for the storage and shipment of coal in quantities limited only by the demands of the markets. Over 300 acres of land have been acquired for terminal purposes bordering on the waters of the Arthur Kill. Work will be speedily commenced, and prosecuted with vigor. Conservative estimates show that the earnings of this line will be sufficient to meet all charges on its cost and leave a large surplus; it will furnish the means of supplying the markets with your just proportion of the coal tonnage at all times. The advantage of the construction of this line in the increase of tonnage on nearly all other parts of the system, without regarding the increase of product of the coal and iron company, can scarcely be estimated, but it is certain that it will add a large increase of traffic earnings. It was anticipated that work on this line could have been commenced before this time, but it was found necessary to make several surveys in order to avoid all grade crossings
134 of other railroads, and your board is pleased to announce that the line adopted is of favorable grades and of almost perfect alignment, the maximum grade being only 15 feet to the mile."

Government's counsel also read in evidence extracts from the report of the same company of November 30, 1891, being from pages

10 and 11 of such report, contained in volume 2 of the old record, pages 564 and 565:

"The experiences of the past year have emphasized the necessity for other means than those hitherto employed in the distribution of anthracite coal in New York Harbor and its tributary tidewater points. The early completion of the new line to Port Reading on the Arthur Kill will remove the limitations upon the growth and extension of this traffic in that quarter, from which the business has suffered in the past. The work is progressing rapidly and will be ready early in the year for operations long in advance of the season when the heaviest traffic is to be expected.

"During the year a new company has been organized under the name of the Tamaqua, Hazleton and Northern Railroad Company for the purpose of building a line from the Catawissa branch to the vicinity of Hazleton, connecting with the Delaware, Susquehanna and Schuylkill Railroad, with which traffic arrangements have been entered into by which we are guaranteed a minimum of 1,000,000 tons of anthracite coal. The new line has been completed and is now in operation."

Government's counsel also read in evidence extracts from the report 135
of the Philadelphia and Reading Coal and Iron Company of November 30, 1895, being from pages 14, 15, and 16 of such report, contained in volume 2, at page 566:

(Page 14:) "The most careful estimate that has been published accords to Reading interests the control of over 33 per cent of all the anthracite in Pennsylvania, and its claim to the possession of this proportion of the coal in the ground is generally conceded. At one time, in 1869 and in 1871, Reading mined and carried its full share of the total production, and so late as the year 1878 it had nearly 29 per cent (28.97). Since that time, while its production has grown steadily, it has increased much less rapidly than that of its competitors, the companies engaged in mining in the northern, or Wyoming, coal field, far outstripping it in the race for tonnage. This comparative retreat on the part of Reading has been partly due to its poverty, which made it difficult to raise the money required to develop its property, and partly to its conservative policy, which led it to be more interested in getting remunerative prices than in increasing its output."

(Pages 15 and 16:) "In February, 1892, the Reading Company leased the Lehigh Valley Railroad and the Central Railroad of New Jersey, and made at the same time an agreement to buy the coal of their allied coal companies—the Lehigh Valley Coal Company and 136
the Lehigh and Wilkesbarre Coal Company—and to pay these companies for their coal, delivered into cars at the mines, certain percentages of the prices that might from time to time be received for coal delivered at tidewater near New York. The tidewater price of coal being largely made up of the two factors, the price at mines and

the charge for transportation thence to tide, this agreement necessarily made the freight rate also a percentage of the price realized for the coal at tidewater, and in order that the leased railroads should earn the rentals which Reading had agreed to pay it was necessary that their allied coal companies should be allowed to mine freely, and that the coal should be sold at remunerative prices. In order to accomplish these two purposes, it was necessary to curtail the product of Reading's mines, lest there should be an oversupply of coal sent to market. It thus came to pass that in the year 1892 Reading's percentage of the total output fell to 19.55 per cent, and in 1893 to 19.35 per cent. The true cause of this falling off in the relative productiveness of Reading's collieries was not generally understood, but the fact led to general incredulity in regard to its capacity to maintain its place in the race for tonnage, and vigorous attempts were made to induce it to take a smaller percentage of the total anthracite business than it had ever carried."

137 Government's counsel also read extracts from the report of the Reading Company of June 30, 1901, being from page 13 of such report, volume 2, page 567 of the old record, as follows:

"CENTRAL RAILROAD COMPANY OF NEW JERSEY.

(Page 13:) "In January, 1901, Reading Company purchased 145,000 shares out of a total of 272,138 shares of the capital stock of the Central Railroad Company of New Jersey—the price paid being $160 per share. This sum was paid by the sale of 60,353 first preferred shares and 34,275 second preferred shares, and the issue of $23,000,000 4 per cent collateral trust bonds due in 1951 which were secured by the deposit of the 145,000 shares of the capital stock of the Central Railroad Company of New Jersey, 29,900 shares of the capital stock of the Perkiomen Railroad, and 4,400 shares of the capital stock of the Port Reading Railroad Company.

"The acquisition of the control of the Jersey Central is not only of enormous advantage because of the additional facilities given to the system, but through this acquisition the Reading system now owns and controls about 63 per cent of all the unmined anthracite coal in the State of Pennsylvania.

"On April 12, 1901, the president of the Reading system was elected president of the Central Railroad Company of New Jersey."

Government's counsel also read in evidence extracts from the report 138
of the Reading Company of June 30, 1906, being from page 35 of such report, contained in volume 2 of the old record, page 567, as follows:

[From Ninth Annual Report of Reading Company for fiscal year ended June 30, 1906, signed by George F. Baer, president (p. 35).]

Philadelphia and Reading Railway Company.—Income account for the year ended June 30, 1906, and comparison with year ended June 30, 1905.

	1905–1906		1904–1905	
Earnings:				
From coal traffic	$17,198,247.07		$17,163,351.47	
From merchandise traffic	15,220,440.96		13,036,535.55	
From passenger traffic	6,216,316.25		5,717,399.37	
From miscellaneous sources	902,241.36		796,458.53	
From transportation of mail	120,795.11		118,324.99	
		$39,658,040.75		$36,832,069.91
Operating expenses:				
For maintenance of way and structures	3,195,152.18		2,738,215.40	
For maintenance of equipment	6,330,881.62		5,650,984.25	
For conducting transportation	11,896,369.94		10,387,562.86	
For general expenses	714,767.98		703,587.10	
		22,137,171.72		19,480,349.61
		17,520,869.03		17,351,720.30
Other expenses:				139
For insurance fund			30,794.26	
For improvements	3,539,352.29		979,643.31	
		3,539,352.29		1,010,437.57
		13,981,516.74		16,341,282.73
Other sources (net earnings)		906,683.83		663,648.97
Net earnings		14,887,200.57		17,004,931.70
Fixed charges		9,502,728.96		9,645,769.48
Surplus		5,384,471.61		7,359,162.22

Government's counsel also read in evidence extracts from report of the Reading Company of June 30, 1908, being page 37 of such report, contained in volume 2, page 568, as follows:

[From Eleventh Annual Report of Reading Company for fiscal year ended June 30, 1908, signed by George F. Baer, president (p. 37).]

Philadelphia and Reading Railway Company.—Income account for the year ended June 30, 1908, and comparison with year ended June 30, 1907.

	1907–1908		1906–1907	
Earnings:				
From coal revenue	$18,577,272.11		$18,730,189.63	
From merchandise revenue	13,502,925.96		16,360,169.92	
From passenger revenue	6,211,933.58		6,399,172.94	
From mail revenue	117,801.32		120,537.44	
From excess baggage revenue	25,520.79			
From express revenue	607,407.69			
From milk revenue (on passenger trains)	213,286.68			
From other passenger-train revenue	87,414.76			
From switching revenue	208,145.05		1,066,208.54	
From special train revenue	10,429.55			
From miscellaneous transportation revenue	1,123.98			
From revenue from operations other than transportation	315,620.45			
		$39,878,881.92		$42,676,278.47
Other income:				
Hire of equipment	1,657,131.49			
Income from securities	194,060.40			
	1,851,191.89			
Less rentals	89,134.57			
		1,762,057.32		
		41,640,939.24		
Operating expenses:				
For maintenance of way and structures	3,803,045.97		3,606,192.34	
For maintenance of equipment	8,094,407.08		7,971,544.44	
For transportation expenses	12,437,316.51		13,138,259.86	
For traffic expenses	451,275.02		426,593.70	
For general expenses	672,251.48		746,740.96	
		25,458,296.06		25,889,331.30
		16,182,643.18		16,786,947.17
Other expenses:				
For additions and betterments		937,659.64		1,847,933.64
		15,244,983.54		14,939,013.53
Outside operations (net earnings)		1,023,656.10		852,657.97
Net earnings		16,268,639.64		15,791,671.50
Fixed charges		9,923,000.21		9,747,246.38
Surplus		6,345,639.43		6,044,425.12

Government's counsel also read in evidence from the old record 141
Government Exhibit 157, being the tabulation of future coal supplies, contained in volume 3 of the old record, at pages 328 and 329, together with the condensed tabulation thereof contained in volume 2 at page 537, accompanied further by a quotation referred to in such tabulation as requested by Mr. Reynolds.

The quotation suggested by Mr. Reynolds is from volume 2 of the record, page 535, from the testimony of William Griffith, who prepared Exhibit 157, and he makes in respect to that exhibit the following statement. Referring to the statement he says:

"The first column gives the names of the railroads whose subsidiary companies are in the coal business and shows the tonnage that those subsidiary companies own, or did own at that time, and also the tonnage that was shipped over these railroads by individuals, or others, who had tonnage contracts with the railroad.

"Q. Under 'tonnage owned,' do you include tonnage in lands which are held in fee, as well as lands which are held by lease?

"A. I mean what tonnage was owned. I do not mean necessarily that the land is owned. They secured this tonnage through owning the lands in fee or having leaseholds on those lands.

"Q. By 'tonnage controlled by contract' what did you mean?

"A. At that time the method of shipment by the individual opera- 142
tors was usually to contract their output to some one of the railroads. They made an agreement by which all their coal, or certain portions of it, should go to a certain railroad for a term of years. Therefore, this road controlled the tonnage from that colliery until the agreement expired."

It is further understood with counsel for the Government that it should appear that Exhibit 157 was a table published in a paper known as the "Bond Record," of the issue of June, 1896; that it consists of an estimate prepared for Harvey Fisk & Sons, of New York, by William Griffith, as of the year 1895, this appearing from the testimony of Mr. Griffith, as shown in the old record, volume 2, page 533.

Mr. Griffith was employed on an early geological survey of the State of Pennsylvania, and had under his charge the Wyoming region, the purpose of that being to make a report to the Commonwealth of Pennsylvania.

[Old Record: Government Exhibit No. 157.]

Tabulated estimate showing the approximate future supply of coal tonnage of the various railroads having access to the Pennsylvania anthracite coal fields.

Railroads.	Wyoming or northern region. Area, 176 square miles.		Lehigh region: Eastern middle field, and Panther Creek basin. Area, 45 square miles.		Schuylkill region. Western middle or Mahanoy-Shamokin field. Area, 94 square miles.		Schuylkill region. Southern or Pottsville field. Area, 109 square miles.		Totals. Area, 484 miles.			Tonnage shipments, 1895.	Duration based on 1895 tonnage shipments.
	Area of coal lands covering 4-foot beds.	Unmined tonnage.	Area of coal lands covering 3-foot beds.	Unmined tonnage.	Area of coal lands covering 3-foot beds.	Unmined tonnage.	Area of coal lands covering 3-foot beds.	Unmined tonnage.	Total area.	Contents, in foot-acres, unmined January 1, 1896. [a]	Total unmined tonnage, 650 tons per foot-acre. [b]		
Del., Lack. & West. R. R. Co.:													
Tonnage owned	16,229	300,853,150							16,229	462,851	300,853,150		
Tonnage by contract	6,519	31,478,850							6,519	48,429	31,478,850		
Total	22,748	332,332,000							22,748	511,280	332,332,000	6,129,260	54 yrs.
Del. & Hudson Canal Co.:													
Tonnage owned	16,578	115,823,200							16,578	178,188	115,823,200		
Tonnage by contract													
Total	16,578	115,823,200							16,578	178,188	115,823,200	4,347,843	26 yrs.
Erie & Wyom'g Val. R. R. Co.:													
Tonnage owned	11,643	94,876,600							11,643	145,964	94,876,600		
Tonnage by contract													
Total	11,643	94,876,600							11,643	145,964	94,876,600	1,746,832	54 yrs.
Erie Railroad Co.:													
Tonnage owned	5,998	34,718,100							5,998	53,414	34,718,100		
Tonnage by contract	1,745	4,161,300							1,745	6,402	4,161,300		
Total	7,743	38,879,400							7,743	59,816	38,879,400	1,820,038	21 yrs.
N. Y., Ont. & West R. R. Co.:													
Tonnage owned													
Tonnage by contract	3,664	13,971,100							3,664	21,494	13,971,100		
Total	3,664	13,971,100							3,664	21,494	13,971,100	1,424,407	9 yrs.

NOTE.—The figures in this column have been changed to include the probable surplus tonnage due to strippings.

									3,004	21,494	13,971,100	1,424,407	9 yrs.
N. Y., Susq. & West. R. R. Co.:													
Tonnage owned	2,020	13,551,850							2,020	20,849	13,551,850		
Tonnage by contract	4,182	13,338,650							4,182	20,521	13,338,650		
Total	6,202	26,890,500							6,202	41,370	26,890,500	1,492,244	18 yrs.
Del., Susq. & Sch'kill R. R. Co.:													
Tonnage owned			6,822	67,361,334					6,822	15,632	67,361,334		
Tonnage by contract			486	2,539,866					486	3,908	2,539,866		
Total			7,308	69,901,200					7,308	107,540	69,901,200	1,905,784	35 yrs.
Pennsylvania R. R. Co.:													
Tonnage owned	4,514	86,062,600			6,645	113,233,900	5,415	48,845,550	16,574	381,757	248,142,050		
Tonnage by contract	750	15,283,450	200	1,100,000	696	21,165,300	1,340	30,811,950	2,986	105,170	68,360,700		
Total	5,264	101,346,050	200	1,100,000	7,341	134,399,200	6,755	79,657,500	19,560	486,927	316,502,750	5,025,645	63 yrs.
Cent. R. R. Co. of New Jersey:													
Tonnage owned	12,378	342,660,500	9,335	351,018,900			4,709	170,080,950	26,422	1,328,862	863,760,350		
Tonnage by contract	865	5,040,750	1,426	8,768,600					2,291	21,245	13,809,350		
Total	13,243	347,701,250	10,761	359,787,500			4,709	170,080,950	28,71 3	1,350,107	877,569,700	5,388,104	163 yrs.
Lehigh Valley R. R. Co.:													
Tonnage owned	9,969	161,212,350	4,052	43,693,000	13,768	244,015,850	8,014	338,279,500	35,803	1,211,078	787,200,700		
Tonnage by contract	2,147	18,187,650	4,775	50,123,400					6,922	105,094	68,311,050		
Total	12,116	179,400,000	8,827	93,816,400	13,768	244,015,850	8,014	338,279,500	42,725	1,316,172	855,511,750	7,360,454	116 yrs.
Philadel. & Reading R. R. Co.:													
Tonnage owned			541	2,135,900	31,406	645,589,100	57,530	1,439,765,600	89,477	3,211,524	2,087,490,600		
Tonnage by contract					2,040	15,709,200	1,052	40,506,700	3,092	86,486	56,215,900		
Total			541	2,135,900	33,446	661,298,300	58,582	1,480,272,300	92,569	3,298,010	2,143,706,500	9,905,039	216 yrs.
Total tonnage owned by railroads	79,329	1,149,758,350	20,750	464,209,134	51,819	1,002,838,850	75,668	1,996,971,600	227,566	7,098,120	4,613,777,934		
Total tonnage controlled by contracts	19,872	101,461,750	6,887	62,531,866	2,736	36,874,500	2,392	71,318,650	31,887	418,749	272,186,766		
Uncontrolled tonnage [c]	1,543	[d] 26,910,650					6,609	[e] 160,911,400	8,152	288,957	187,822,050		
Grand total	107,744	1,278,130,750	27,637	526,741, 0	54,555	1,039,713,350	84,669	2,229,201,650	267,605	7,805,826	5,073,786,750	46,545,670	109 yrs.

[a] A foot-acre is an acre of coal bed 1 foot thick. Two acres of a coal bed 10 feet thick would contain 20 foot-acres.
[b] Mr. Griffith's explanation of his estimate of 650 tons per foot-acre will be found on page 109, March issue of the Bond Record. (Editors.)
[c] This tonnage is contained in undeveloped lands in private hands, still subject to purchase or lease.
[d] The region containing major part of this tonnage is accessible by the Lehigh Valley, Delaware, Lackawanna & Western, Delaware & Hudson, Central of New Jersey, and New York, Susquehanna & Western, and remainder accessible also to the Erie & Wyoming Valley, Erie, Ontario & Western, and Pennsylvania Railroads.
[e] Region accessible by the Philadelphia & Reading, Lehigh Valley, Pennsylvania, and Central of New Jersey.

[Tabulation, from Old Record, Vol. 2, p. 537.]

145 "The following comparison of percentages of shipment, allotment, and tonnage reserve will also be interesting in this connection:

	Percentage of shipment, 1895.	Percentage of allotment, 1896.	Percentage of future supply controlled.
Delaware, Lackawanna and Western R. R. Co	13.16	13.35	6.55
Delaware and Hudson Canal Co	9.34	9.60	2.29
Erie and Wyoming Valley R. R. Co	3.75	4.00	1.62
Erie R. R. Co	3.91	4.00	.77
New York, Ontario and Western Ry. Co	3.06	3.10	.28
New York, Susquehanna and Western R. R. Co	3.02	3.20	.54
Delaware, Susquehanna and Schuylkill R. R. Co	4.11	3.50	1.38
Pennsylvania R. R. Co	10.59	11.40	6.24
Central R. R. of New Jersey	11.51	11.70	17.30
Lehigh Valley R. R	15.81	15.65	16.87
Philadelphia and Reading R. R. Co	21.47	20.50	42.25
Uncontrolled tonnage	.....	.....	3.71
Total (see diagram on p. 501)	.....	.....	100.00

"From this we see that the corporations named control, either directly or indirectly through their subcompanies, 96.29 per cent of the available tonnage of the future, and in about the following manner:

	Per cent.
They own by actual purchase or its equivalent	90.93
They control by long-term contracts, say about	3.36
They control by short-term contracts of various kinds, say	2.00
	96.29
Uncontrolled, i. e., remaining in private hands	3.71
Total	100.00

Government's counsel also read in evidence from the old record 146
Government's Exhibit No. 14, being a statement of tonnage shipped by various railroads, contained in volume 3, pages 48 to 54, inclusive, as follows:

[Old Record: Government Exhibit No. 14.] 147

Statement of shipments of anthracite coal carried by the initial transportation lines in the month of December, 1901, and in the calendar year 1901, compared with the corresponding periods last year.

NOTE.—This statement is prepared exclusively for the purposes of the officers of the transporting companies named, and is not for public information.

	Buckwheat No. 1, and larger sizes, December, 1901.	Sizes below buckwheat No. 1, December, 1901.	Total shipments, December, 1901.	Total shipments, December, 1900.	Difference.
Philadelphia and Reading Ry	650,800	39,900	690,700	1,068,520	a 377,820
Lehigh Valley R. R	483,477	39,643	523,120	760,166	a 237,046
Central Railroad of New Jersey	331,790	31,016	362,806	587,762	a 224,956
Delaware, Lackawanna and Western R. R	531,787	51,791	583,578	731,031	a 147,453
Delaware & Hudson Co	355,999	14,944	370,943	434,915	a 63,972
Pennsylvania R. R	372,883	19,880	392,763	521,111	a 128,348
Pennsylvania Coal Co. (Included in Erie R. R.)					
Erie R. R	367,680	50,969	418,049	600,996	a 182,947
New York, Ontario and Western Ry	162,646	41,987	204,633	212,563	a 7,930
Delaware, Susquehanna and Schuylkill R. R	73,982	2,879	76,861	158,125	a 81,264
New York, Susquehanna and Western R. R. (Included in Erie R. R.)					
Total	3,330,444	293,009	3,623,453	5,075,189	a 1,451,736

	Buckwheat No. 1, and larger sizes, year 1901.	Sizes below buckwheat No. 1, year 1901.	Total shipments, year 1901.	Total shipments, year 1900.	Difference.
Philadelphia and Reading Ry	10,460,444	510,563	10,971,007	9,338,516	b 1,632,491
Lehigh Valley R. R	7,821,127	489,216	8,310,343	6,909,442	b 1,400,901
Central Railroad of New Jersey	5,670,101	489,936	6,160,037	5,309,856	b 850,181
Delaware, Lackawanna and Western R. R	6,900,114	631,621	7,531,735	6,013,849	b 1,517,886
Delaware and Hudson Co	4,791,160	216,462	5,007,622	3,973,859	b 1,033,763
Pennsylvania R. R	5,326,699	320,426	5,647,125	5,169,947	b 477,178
Pennsylvania Coal Co. (Included in Erie R. R.)					
Erie R. R	5,194,892	646,701	5,841,593	5,165,070	b 676,523
New York, Ontario and Western Ry	2,166,704	341,573	2,508,277	1,658,457	b 849,820
Delaware, Susquehanna and Schuylkill R. R	1,532,294	58,568	1,590,862	1,568,488	b 22,374
New York, Susquehanna and Western R. R. (Included in Erie R. R.)					
Total	49,863,535	3,705,066	53,568,601	45,107,484	b 8,461,117

a Decrease. b Increase.

Coal on hand at tidewater shipping ports December 31, 1901, 415,757 tons; November 30, 1901, 604,334 tons; decrease, 188,577 tons; December 31, 1900, 264,511 tons; increase, 151,246 tons.

WM. W. RULEY, *Chief of Bureau.*

BUREAU OF ANTHRACITE COAL STATISTICS,
Philadelphia, January 8, 1902.

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extensive flooding of the collieries, and not by the inability of the collieries to produce the required amount of coal under ordinary circumstances, The Central Railroad Company of New Jersey shall for those years be relieved of its obligation to pay to The Lehigh Coal and Navigation Company the sum of money which The Lehigh Coal and Navigation Company would have received from the business of the said years if the guaranteed production of anthracite had been made; and The Central Railroad Company of New Jersey shall and will cause the production of the anthracite lands aforesaid to pass over the lines of the Lehigh and Susquehanna Railroad and branches to markets that can be reached by way of the said railroad lines, and as far as it can be carried toward such markets over said lines, from which lines it shall not be diverted except for an equivalent that shall be satisfactory to The Lehigh Coal and Navigation Company, and that shall have been accepted by them in writing before such diversion shall be made, The Lehigh Coal and Navigation Company agreeing on its part to consent to such diversion when it shall clearly appear that the interests of the Lehigh and Susquehanna Railroad and branches will be thereby promoted," and

Whereas it is important for the interests of both the parties hereto (as tending to secure enough business for the Lehigh and Susquehanna Railroad and branches to enable The Central Railroad Company of New Jersey to earn sufficient revenues on the Lehigh and Susquehanna Railroad and branches to pay the stipulated rental), that so much as possible of the coal product of The Lehigh Coal and Navigation Company's lands shall be sent to market over the lines of the Lehigh and Susquehanna Railroad and branches and the Central Railroad New Jersey, it is agreed between the parties hereto that the proviso in the first of the covenants of the party of the first part in the agreement of March 31, 1871, shall be changed so as to read as follows:

"*Provided*, That one-fourth and no more of the coal to be mined annually by The Lehigh Coal and Navigation Company from lands owned, leased, or controlled by it may be sent to market over railroad lines other than the Lehigh and Susquehanna Railroad and branches in case that by so doing The Lehigh Coal and Navigation Company can realize a larger price or profit than it would have realized from the price at the mines together with its proportion of the freight earnings on such coal on the Lehigh and Susquehanna Railroad and branches if it had been shipped over that railroad; but The Central Railroad Company of New Jersey shall have the option in such cases of buying such coal of The Lehigh Coal and Navigation Company at its mines, paying therefor a price which added to the proportion of the freight earnings on such coal accruing to The Lehigh Coal and Navigation

Company shall not be less than that which The Lehigh Coal and Navigation Company would have realized if its coal had been shipped over other lines of railroad. But nothing in this proviso shall be held to limit the shipment of coal by The Lehigh Coal and Navigation Company over the Lehigh and Hudson River Railway to points in the interior of New England, except that the amount of coal shipped by The Lehigh Coal and Navigation Company over the Lehigh and Hudson River Railway, added to the amount that may be sent to market by railroad lines other than the Lehigh and Susquehanna Railroad and branches, shall not in any year exceed twenty-five per cent of the total production of its mines," and

Whereas, it is important for the interests of both the parties hereto as tending to the development of the business of the Lehigh and Susquehanna Railroad and branches that an independent connection with the city of Scranton and with the railroads centering there should be secured for the said railroad, it is agreed between the parties hereto that The Lehigh Coal and Navigation Company shall assign to The Central Railroad Company of New Jersey the contract with the Delaware and Hudson Canal Company of January 27, 1887, a copy of which is hereto annexed marked "Exhibit C," under which it has the right to the unrestricted use of the Delaware and Hudson Canal Company's railroad between Union Junction and Minooka Junction, and shall procure a lease to The Central Railroad Company of New Jersey of the railroad which the Wilkesbarre and Scranton Railway Company is building from Minooka Junction to Scranton; and that The Central Railroad Company of New Jersey shall assume all the duties to the Delaware and Hudson Canal Company which under the said agreement of January 27, 1887, were assumed by The Lehigh Coal and Navigation Company, and shall lease the railroad of the Wilkesbarre and Scranton Railway Company upon terms which shall be generally similar to those of the existing lease of the Lehigh and Susquehanna Railroad and branches, except that the annual rental shall be fixed at the rate of 6 per cent on the cost of the Wilkesbarre and Scranton Railway as the same shall from time to time appear on the books of the said railway company, The Central Railroad Company of New Jersey assuming and paying all taxes that may by any lawful authority be assessed on the property of the Wilkesbarre and Scranton Railway Company, and on the rent or revenue derived by The Lehigh Coal and Navigation Company from said lease, so that The Lehigh Coal and Navigation Company shall receive the rent of 6 per cent on the cost of the Wilkesbarre and Scranton Railway free of all charges whatever; the lease of the Wilkesbarre and Scranton Railway and the assignment of the con-

tract with the Delaware and Hudson Canal Company being terminable by the party of the first part whenever the lease of the Lehigh and Susquehanna Railroad and branches shall terminate; and that The Central Railroad Company of New Jersey shall operate in connection with the Lehigh and Susquehanna Railroad, the aforesaid roads connecting the Lehigh and Susquehanna Railroad with the city of Scranton and with the railroads centering there; and

Whereas, it has been the purpose of the agreements heretofore made between the parties hereto, as is plainly declared in the deed of March 31, 1871, and elsewhere, that for the public convenience and accommodation and for the interest of the parties hereto, the railroads of the parties hereto, forming a continuous line of railroad from the Wyoming and Lehigh coal fields of Pennsylvania to the waters of the Hudson River at Jersey City, should be worked as one line and under one direction, it is agreed between the parties hereto that if at any time it shall be necessary for the purpose of maintaining the continuity of the said line of railroad and the unity of its management that the Lehigh and Susquehanna Railroad and branches should be operated by the Lehigh Coal and Navigation Company, then The Central Railroad Company of New Jersey shall and will request The Lehigh Coal and Navigation Company to operate the Lehigh and Susquehanna Railroad and branches, and The Lehigh Coal and Navigation Company shall accede to the request and shall operate the Lehigh and Susquehanna Railroad and branches for the account of The Central Railroad Company of New Jersey and at its charge and risk so long as it may remain necessary so to do in order to carry out the purpose of the existing agreements. In that event The Central Railroad Company of New Jersey shall furnish the equipment required, and shall in all other respects carry out the provisions of this agreement and of the deeds of March 31, 1871, and of May 29, 1883, the only change contemplated in the duties of The Central Railroad Company of New Jersey being that in the operation of the Lehigh and Susquehanna Railroad and branches it shall act through The Lehigh Coal and Navigation Company instead of through its own officers. And it is further agreed that when in the opinion of The Central Railroad Company of New Jersey there shall be no longer any necessity for the purposes hereinbefore set forth that The Lehigh Coal and Navigation Company shall continue to operate the Lehigh and Susquehanna Railroad and branches, then The Lehigh Coal and Navigation Company shall surrender to The Central Railroad Company of New Jersey possession of the Lehigh and Susquehanna Railroad and branches and of the equipment belonging to The Central Railroad Company of New Jersey, and The Central Railroad Company of New Jersey shall

assume and shall continue the operation of the Lehigh and Susquehanna Railroad and branches under the deeds of March 31, 1871, and of May 29, 1883, and this agreement.

The parties hereto respectively agree that The Central Railroad Company of New Jersey shall and will on or before the first day of January, 1888, deposit with the Fidelity Insurance Trust and Safe Deposit Company of Philadelphia $2,310,000 of the 5 per cent bonds to be secured by the proposed general mortgage of The Central Railroad Company of New Jersey, and that these bonds shall be pledged for the payment at maturity of $2,310,000 of the gold loan of The Lehigh Coal and Navigation Company falling due December 15, 1897, the payment of the principal and interest on which amount was assumed by The Central Railroad Company of New Jersey in the second of the covenants of the party of the second part in the agreement of March 31, 1871, these bonds being an additional security to that of the equipment which by the agreement just recited is charged with the payment of the above recited sum; and this being done, that The Lehigh Coal and Navigation Company shall and will on or before the first day of March, 1888, pay to The Central Railroad Company of New Jersey, in cash, such sum as may then stand to the credit of The Central Railroad Company of New Jersey on the books of The Lehigh Coal and Navigation Company for expenditures made on the Lehigh and Susquehanna Railroad and branches under the provisions of the first of the mutual covenants of the agreement of March 31, 1871, and The Lehigh Coal and Navigation Company shall and will thereafter pay The Central Railroad Company of New Jersey, in cash, for all expenditures that may be made under the provisions of the first of the mutual covenants of the agreement of March 31, 1871, as aforesaid, within twelve months from the end of the year in which such expenditures shall have been made: *Provided*, That The Central Railroad Company of New Jersey shall not, at the time when such payments may become due, be in default under the provisions of the agreement of March 31, 1871, or of the agreement of May 29, 1883, or of this agreement.

The parties hereto agree that in case of any breach of covenant or contract by The Central Railroad Company of New Jersey if the same shall not be fully compensated within a reasonable time the party of the first part may at its option declare the deed of March 31, 1871, and the deed of May 29, 1883, and this agreement to be determined, and may exercise all the remedies for enforcing its rights and for the possession of the demised property as the same are conferred by the deed of May 29, 1883.

The parties hereto agree that if anyone claiming under The Central Railroad Company of New Jersey, by virtue of any mortgage or prior grant or agreement, shall at any

time set up or pretend that he is entitled to any property or contract or to any benefit or interest in any property which is the subject of the deed of March 31, 1871, or of the deed of May 29, 1883, or of this agreement, but is not bound by the covenants in the deed of May 29, 1883, or by the terms of this agreement, nothing herein contained or which may be done under this agreement shall in any manner affect the right of The Lehigh Coal and Navigation Company to set up any matters in avoidance of that claim which it might do if this deed had never been executed nor the possession and control of the Lehigh and Susquehanna Railroad and branches enjoyed by The Central Railroad Company of New Jersey or acquiesced in by The Lehigh Coal and Navigation Company after January 1, 1887.

And the parties hereto agree that in case of any difference of opinion between them in relation to any of the provisions of this agreement which may be proper subjects of arbitration, the matters in dispute shall be referred to arbitrators, one to be appointed by The Lehigh Coal and Navigation Company and one by The Central Railroad Company of New Jersey, and the two thus chosen shall select a third, and their decision, or that of the majority of them, shall be final and conclusive.

This agreement shall be binding upon the parties hereto during the continuance of the estate granted and the contract made by the deeds of March 31, 1871, and of May 29, 1883, and shall together with the said deeds constitute one contract between The Lehigh Coal and Navigation Company and The Central Railroad Company of New Jersey, but all the rights and duties created by this agreement or under its provisions shall absolutely cease and determine whenever those deeds shall cease and determine for any consideration, whether by limitation or on account of the act or omission of The Central Railroad Company of New Jersey.

In witness whereof the parties hereto have caused their corporate seals, duly attested, to be hereunto affixed, the day and year first above written.

By order of the board of managers of—

THE LEHIGH COAL AND NAVIGATION COMPANY,
J. S. HARRIS, *President.*

Attest:

S. SHEPHERD, *Secretary.*

[SEAL L. C. & N. Co.]

THE CENTRAL R. R. CO. OF NEW JERSEY,
J. R. MAXWELL, *President.*

Attest:

SAML. KNOX, *Secretary.*

[SEAL C. R. R. Co. of N. J.]

[Acknowledgments follow but are not printed.]

EXHIBIT A.

Articles of agreement, made this 31st day of March, A. D. 1871, between The Lehigh Coal and Navigation Company, a corporation created by and existing under the laws of Pennsylvania, parties of the first part, and The Central Railroad Company of New Jersey, a corporation created by and existing under the laws of the State of New Jersey, parties of the second part.

Whereas, the parties of the first part are the owners of a railroad extending from a point at or near Wilkesbarre, in the State of Pennsylvania, to a point at or near Phillipsburg, in the State of New Jersey, having various branches within the said State, which are hereinafter mentioned, and the parties of the second part are the owners of a railroad beginning at the terminus of the said railroad of the parties of the first part at Phillipsburg, aforesaid, and extending in the State of New Jersey to a point on the Hudson River at Jersey City, and the said roads so connected form a continuous line of railroad from the Wyoming and Lehigh coal fields of Pennsylvania to the Hudson River aforesaid, and it is deemed desirable for the public convenience and accommodation and for the interest of the parties hereto that the said railroads should be worked as one line and under one direction.

And whereas, the parties of the first part are willing to contract for the working of their said railroad and the branches thereof hereinafter mentioned by the parties of the second part at the cost and risk of the parties of the second part and on fair and equitable terms, and the parties of the second part are willing on such terms to undertake the same:

Now, therefore, this agreement witnesseth, that the parties of the first part, in consideration of the premises and of the faithful performance of the covenants and agreements of the parties of the second part hereinafter mentioned and contained, and by the parties of the second part to be kept and performed, have granted, leased, and demised, and by these presents do grant, lease, and demise unto the parties of the second part, all the railroads of the parties of the first part within the State of Pennsylvania, including their bridge across the Delaware River at Easton, as follows, to wit:

The Lehigh and Susquehanna Railroad, extending from Phillipsburg, in the State of New Jersey, to Union Junction, in Luzerne County, Pa., where it connects with the railroad built by the Union Coal Company, a distance of 105 miles

more or less. Also, the railroad known as the Nanticoke Railroad, situated in said Luzerne County, extending from the Lehigh and Susquehanna Railroad at Ashley to the Newport mines, a distance of 8½ miles more or less, with a branch from the same extending to the Lee mines, a distance of 2 miles more or less; extending also from Ashley to Gardner's Switch, a distance of 4½ miles more or less; also extending from Union Junction to the Everhart mines, a distance of 3 miles more or less; and also extending from Mill Creek to the Enterprise mines, a distance of 4 miles more or less. Also, the branch railroad in the county of Luzerne known as the Nescopec Branch, extending from White Haven to Upper Lehigh, a distance of 9 miles more or less. Also, the Nesquehoning Valley Railroad, situated in the counties of Carbon and Schuylkill, extending from Nesquehoning Junction to Tamanend, where it connects with the Catawissa Railroad, a distance of 16½ miles more or less. Also, the Tresckow Railroad, in the counties of Schuylkill, Carbon, and Luzerne, extending from the Catawissa Railroad at Silver Brook to the Honey Brook mines, a distance of 6½ miles more or less. Also, the branch railroad in the counties of Northampton and Lehigh known as the Coplay Branch, extending from Laubach station to the furnaces of the Thomas Iron Company, a distance of 1 mile more or less. Also, the branch railroad in the county of Lehigh extending from the railroad near Bethlehem across the Lehigh River to a connection with the North Pennsylvania Railroad at South Bethlehem, a distance of 1,428 feet more or less. Also, the inclined planes in Luzerne County, with all the machinery connected therewith, extending from Ashley to Solomon's Gap station, a distance of 3 miles more or less; together with all sidings, station houses, machine shops, and other appurtenances of said roads and branches; and also all and singular the roadways, and also the franchises of the parties of the first part for maintaining and working the same and taking tolls thereon and for demanding and receiving compensation for the use of the same. Excepting and reserving out of this demise the Nesquehoning Tunnel and the railroads or railways laid therein and extending beyond the same; and also all railroads and railways extending from breakers into mines.

To have and to hold the said demised railroad and premises unto the parties of the second part, their successors and assigns, from the 1st day of April next ensuing the date hereof for and during the continuance of the charters of the said companies and of any renewals of the same; under and subject nevertheless to all the mortgages existing on the said demised premises: *Provided, however*, That the term of the lease of the Nesquehoning Railroad above mentioned shall not extend beyong the term of nine hundred and ninety-nine years from the 4th of November, 1868, less one day.

And the parties of the second part in consideration of the premises and of the faithful performance of the covenants and agreements of the parties of the first part hereinafter mentioned and contained to be kept and performed by the parties of the first part, have covenanted and agreed, and by these presents do covenant and agree, to and with the parties of the first part as follows, to wit:

First. That they, the parties of the second part, shall and will take and well and efficiently operate at their own cost and risk the said demised premises and all such extensions and additions as may be hereafter made of and to the same under the provisions of this agreement; and shall and will pay to the parties of the first part for the use of the same, at the times hereinafter mentioned, one-third of the gross receipts from the traffic or business of the said demised premises and extensions and additions thereto, without any other deductions therefrom than are hereinafter mentioned.

Second. The parties of the second part shall and will, on the 1st day of April next, purchase all the railroad equipment of the parties of the first part mentioned and described in the inventory hereunto annexed, at the prices mentioned or fixed in said inventory, amounting in the aggregate to the sum of $2,310,000, and in payment of said purchase money the parties of the second part shall and will assume and pay or discharge at or before the maturity thereof $2,310,000 of the 6 per cent bonds of the $5,000,000 gold loan of the parties of the first part falling due December 15, 1897, secured by the mortgage of the demised premises and of said equipment bearing date the 27th of November, 1867, subject to which mortgage this sale is made, the payment or discharges of the said bonds by the parties of the second part to be made by surrender of the same, from time to time, to the trustees of the said last-mentioned mortgage for cancellation, as the said bonds may be purchased or paid by the said parties of the second part, and an equal amount in value of said equipments to be released by the said trustees simultaneously with such surrender till the whole is released on the surrender of the whole amount of bonds assumed as aforesaid. And the parties of the second part shall and will assume the payment of the interest on said amount of the said bonds from and after the 1st day of April next, and shall and will pay or provide for the payment of the interest or coupons of said bonds or of such amount thereof as may be from time to time outstanding, as well as the taxes thereon, according to the true intent and meaning of the said bonds. And they also agree to maintain and perpetuate the said equipment and to replace such parts as may be destroyed by accident or use, so far as the same may be required to keep the said equipment not released as aforesaid subject to

the said mortgage equal in value to the amount of bonds assumed as aforesaid still outstanding; and the said equipment unpaid for shall be subject to annual inspection by the parties of the first part.

Third. The parties of the second part shall and will, on the 1st day of April next, take and pay for at a fair valuation, to be agreed on by the respective superintendents of the parties hereto, all the shop tools and machinery, all tools used in the maintenance of the road, all rails, ties, spikes, and chairs on hand for repairs, and all materials and supplies on hand in the shops or elsewhere, belonging to the parties of the first part.

Fourth. The parties of the second part shall and will, at their own cost and charges, maintain and perpetuate the railroad and premises demised, and shall and will keep and maintain the same in good order and repair and fit for efficient use, and will so return and redeliver up the same at the termination of this lease: *Provided*, That in case of damage to the said demised premises by freshet to the extent of $5,000 or more at any one time the repairs shall be made promptly by the parties of the second part, but at the cost and expense of the parties of the first part.

Fifth. The parties of the second part shall and will furnish, from time to time, at their own cost, the necessary machinery, rolling stock, and equipment of all kinds required for all the business of the demised premises, and carry on the said business at fair prices and with due reference to the interests of both companies. It being the true intent and meaning of this agreement that the demised premises shall be so worked and maintained by the parties of the second part as to secure the largest amount of revenue possible therefrom; but they shall not be bound to perform or do any act or thing which may divert from the railroad of the Lehigh Valley Railroad Company business which naturally belongs to the said railroad.

Sixth. It being understood that the parties hereto of the first part and the Lehigh Valley Railroad Company are competitors in the general railroad business of the Wyoming and Lehigh valleys, the parties of the second part do further covenant and agree that the Lehigh Valley Railroad Company shall not, by any act of the parties of the second part, have or obtain any interest in this agreement which shall be at any time asserted or exercised to the detriment of the parties of the first part, or of the revenues derived from the business of the demised premises, or the future increase thereof; but in case of any contract between the parties of the second part and the Lehigh Valley Railroad Company for merger, lease, or other combination of their interests the annual revenue or gross receipts of the parties of the first part shall never be less than the one-ninth of the aggre-

gate gross receipts derived from the Lehigh Valley Railroad and its branches and the premises hereby demised.

Seventh. The parties of the second part shall and will furnish, from time to time, on reasonable notice, all the cars that may be required by the parties of the first part, or their assigns, to transport the coal that may be mined by them, or their lessees for the time being, on lands of the said parties of the first part, including their collieries shipping through the Nesquehoning Tunnel, and to transport the same as consigned without unnecessary delay. All coal consigned by the parties of the first part, or their assigns, to points not reached by the roads controlled by the parties of the second part, or by the canals of the parties of the first part, shall be delivered by the parties of the second part to such other roads as will enable it to reach its ultimate destination.

Eighth. The parties of the second part shall and will furnish, on reasonable notice, all cars that may be required for the transportation of coal from any colliery on the line of the said demised roads, or any roads connecting therewith, destined for shipment at Coalport or Mauch Chunk or other shipping point by the canal of the parties of the first part. The rates on said coal from the collieries to the canal, over the road worked by the parties of the second part, shall not exceed the rates charged at the same time on the same portions of said road on coal from the same collieries when destined to same points by railroad: *Provided*, The aggregate charges shall not be less than 16 cents per ton, and that all expenses of shipping from the cars into boats, maintaining the tracks and sidings at the shipping points on said canal, and transferring the coal by shifting engines at said points shall be borne by the parties of the first part.

Ninth. The parties of the second part covenant and agree that on all business passing in whole or in part over said demised railroad and branches, and in whole or in part over the railroad or railroads owned or controlled by the parties of the second part, the said parties of the second part shall and will credit to the said road and branches hereby demised their full pro rata proportion (according to the distance carried on said roads) of all gross receipts derived from such business, subject only to such terminal and other charges as are usual and general; and in prorating the distances to and from the Wyoming Valley they shall be computed as if over the "back track," even when the business is carried over the planes.

Tenth. The parties of the second part further covenant and agree that on coal delivered for transportation by the parties of the first part on sidings at the northern end of the Nesquehoning Tunnel the rates of transportation shall not exceed the rates charged at the same time from Penn Haven

to the same points on coal from the Lehigh region, either by the parties of the second part or by the Lehigh Valley Railroad Company.

Eleventh. The parties of the second part further covenant and agree that the provisions of the contract with the Wilkesbarre Coal and Iron Company, as far as they relate to transportation, shall extend to all coal mined in the Wyoming Valley by the parties of the first part, or from their lands by their lessees or assigns, and to coal from collieries in said valley whose product is controlled under existing contracts by the parties of the first part; and upon the termination of the said contract with the said Wilkesbarre Coal and Iron Company, as therein provided, the parties of the second part shall and will transport the said coal at rates not higher than those charged to other parties shipping coal from said region, such rates, if unsatisfactory, to be submitted to arbitration as hereinafter provided.

Twelfth. The parties of the second part shall and will assume and well and faithfully perform all the obligations of the parties of the first part under contracts set out in the schedule annexed to this agreement, as far as they relate to transportation upon the said demised premises, and so far as they are binding on the said parties of the first part, receiving in consideration therefor all the benefits of the said contracts.

Thirteenth. The parties of the second part shall and will keep in proper books, to be provided by them, full and accurate and separate accounts of the business of the road and its branches hereby demised, which shall be open to the inspection and examination of the parties of the first part at all times, upon reasonable request and notice.

Fourteenth. The parties of the second part covenant and agree that all persons traveling over the roads hereby demised in the prosecution of the business of the parties of the first part shall be allowed to pass free of charge, subject to the rules and regulations of the parties of the second part applicable to other persons having the like privileges.

And the parties of the first part do hereby covenant and agree to and with the parties of the second part as follows, to wit:

First. That all coal mined by the parties of the first part on lands now owned by them, or that may be hereafter acquired by them, shall be sent to market over the roads of the parties to this agreement, when destined to points or markets reached by the said roads; and when destined for markets not so reached, it shall be sent as far as practicable over said roads, excepting always coal destined for shipment by canal, and excepting all coal covered by contracts now existing and mentioned in the twelfth of the foregoing covenants of the parties of the second part: *Provided*, That one-

fourth of the coal mined annually by the parties of the first part in the Wyoming region may be sent to markets not reached by lines running toward the Delaware River.

Second. The parties of the first part covenant and agree that in case the coal lands now owned and held by them, or that may be hereafter acquired by them, shall be sold, leased, or transferred by them to other parties; all such lands shall nevertheless be subject to the provisions of this agreement.

Third. The parties of the first part covenant and agree that rates of transportation of coal and other freights upon their canal, between points common to both railroad and canal, shall be arranged from time to time by the parties hereto; and shall conform as nearly as possible to the rates at the time on the railroads between the same points, it being understood that the canal rates may be reasonably below the rates to the same points on the railroad, as heretofore accustomed, so that each shall be used to reach markets and points which can be best supplied by the respective works.

Fourth. The parties of the first part covenant and agree that their corporate rights and privileges shall, at all times, be used in the construction of additional roads and branches when required as herein stipulated, or to aid the parties of the second part in carrying out the provisions of this agreement.

Fifth. The parties of the first part covenant and agree that the parties of the second part shall have the option at any time within three years from the first day of August next to lease the canal and its appurtenances, excepting ground and water rents now existing, at a net annual rent of $300,000, assuming in connection therewith the lease of the Delaware Division Canal.

Sixth. The parties of the first part covenant and agree that in case of the nonpayment of interest by them on any of the mortgages now existing on the demised premises, or if necessary to provide the sums due at any time to any time to any sinking fund stipulated for in any of the said mortgages, the parties of the second part shall have the right to pay directly to the trustees of any such mortgage so much of the rent due and payable to the parties of the first part under this agreement as may be necessary for the said purposes.

Seventh. The parties of the first part covenant and agree that they have full power and authority, under the laws of Pennsylvania, to make and execute this lease, transfer, and contract, so as to fully vest the said demised premises and property in the parties of the second part as herein provided; and that the parties of the second part shall have full right to take, occupy, and use the said railroad, with its appurtenances, under the lease, transfer, and contract.

And it is mutually covenanted and agreed by the parties hereto, as follows:

First. That all expenditures required for extending the road or its branches hereby demised, or for additional branches, second track, additional sidings, stations, shops, or other buildings, for improving the alignment of the road at Stony Creek at a cost not exceeding $200,000, and for masonry walls as a protection against freshets, shall be at the expense of the parties of the first part; but no such expense shall be incurred without the consent in writing of the said parties of the first part, which consent shall not be withheld without reasonable cause. All such improvements shall be made by the parties of the second part, and the cost thereof advanced by them if required, they receiving on such advances a semi-annual percentage equivalent to the dividends declared during the same period on the stock of the parties of the first part: *Provided*, That such percentage shall not be less than 7 per cent per annum: *And provided also*, That the parties of the first part may at any time refund such advances.

Second. That all railroads or railways with their branches, extensions, sidings, and buildings connected therewith, hereafter constructed under the franchises of the parties of the first part and with the concurrence of both the parties hereto, shall, when and as the same are constructed, be deemed, and taken to pass under this agreement as part of the premises hereby demised, and all necessary deeds to carry this covenant into effect shall be executed by the parties hereto upon request of either.

Third. That the parties of the first part shall and will, by and with the consent of the board of managers of the Railroad Car Trust of Philadelphia and of the Lehigh Equipment Trust of Philadelphia, respectively, assign and transfer to the parties of the second part, and the parties of the second part shall and will take by such assignment, all the leases of cars and locomotives made by the said trusts, respectively, to the parties of the first part, and all the cars and locomotives mentioned in the said leases respectively, and described or mentioned in the second inventory hereto annexed. And such assignment being made, the parties of the second part shall and will thereupon assume and pay all the obligations of the parties of the first part under the said trusts and leases respectively.

Fourth. That all dwelling houses, except station houses, are excepted from this lease. But the parties of the second part may at their own cost erect additional houses on any part of the demised premises and receive the rents of such houses to their own use.

Fifth. That all settlements between the parties and payments of rent by the parties of the second part for the said demised premises shall be made monthly on the fifteenth day of the month, or as soon thereafter as possible.

Sixth. That in case of any difference of opinion between the parties hereto in relation to any of the provisions of this contract, or in case either party shall be dissatisfied with the manner in which the business is done by the other party, the matters in dispute shall be referred to arbitrators to be appointed in the usual manner, whose decision or a majority of them shall be final and conclusive.

Seventh. That in case of any breach of covenant on the part of the parties of the second part, their successors or assigns, and notice thereof given by the parties of the first part, or their assigns, to the parties of the second part, if the same can not or shall not be fully compensated within a reasonable time thereafter, then and in such case the parties of the first part, or their assigns, may, at their option, declare this lease to be terminated and the agreements herein contained to be rescinded, and may thereupon enter on the demised property and premises as and for condition broken, and repossess themselves as of their old and former estate, and may resume, take, use, and enjoy all the rights, privileges, and franchises hereby demised or granted as if this agreement had never been made; and this contract shall from thenceforward be deemed and taken to be utterly ended, saving and excepting the right of the parties of the first part or their assigns to sue for and recover, by any proceedings at law or in equity, compensation for all damages for, or by reason of, any breach or breaches of any covenant or covenants on the part of the parties of the second part, as fully as if this agreement continued in full force; and saving and excepting the rights of the parties of the second part to the previous repayment of all advances made by them for improvements, and also saving and excepting the personal property purchased and paid for by the parties of the second part; but no such option of declaring this lease terminated shall be exercised by the parties of the first part or their assigns while there exists any default under this agreement on their part.

In witness whereof, the said parties have caused their corporate seals to be hereunto affixed, duly attested, the day and year first above written.

By order of the board of managers of—

THE LEHIGH COAL AND NAVIGATION COMPANY,

[L. S.] E. W. CLARK, *President*

F. MITCHELL, *Secretary*.

CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Per JOHN TAYLOR JOHNSTON, *President*.

Attest:

[L. S.] SAML. KNOX, *Secretary*.

EXHIBIT B.

Articles of agreement, made this 29th day of May, 1883, by and between The Lehigh Coal and Navigation Company of the first part, The Central Railroad Company of New Jersey of the second part, and The Philadelphia and Reading Railroad Company of the third part.

Whereas, The Lehigh Coal and Navigation Company and The Central Railroad Company of New Jersey entered into certain articles of agreement under date of March 31, 1871, a copy of which is hereto annexed, marked "Exhibit A;"

And whereas, the parties hereto are willing to covenant and agree to and with one another as hereinafter set forth:

Now, therefore, this agreement witnesseth, that the parties hereto have covenanted and agreed and do hereby covenant and agree to and with each other as follows:

First. This agreement is to be deemed and taken to have been incorporated into the contract of March 31, 1871 (but only to be operative from and after June 1, 1883), as if originally there written, and each party is to have the same remedies as are provided in the original contract for all rights secured by the contract as thus modified, and as if the said original contract had been herein recited and set forth at length as part hereof; and wherever in this agreement the expression "Lehigh and Susquehanna Railroad and branches" is used, it shall be taken to include all the railroads now or hereafter to be operated under the original contract of March 31, 1871, and this supplemental agreement.

Second. The Central Railroad Company of New Jersey agrees that inasmuch as The Philadelphia and Reading Railroad Company, after it takes possession of the Lehigh and Susquehanna Railroad and branches, will also become responsible for the proper conduct of the business und[illegible] the provisions of the aforesaid agreement of March 31 1871, any breach of the covenants of the original contract or of this supplemental agreement by The Philadelphia and Reading Railroad Company shall have the same effect in all respects as if the breach had been committed by The Central Railroad Company of New Jersey.

Third. The Philadelphia and Reading Railroad Company agrees that it will assume and become liable for the faithful execution of all the covenants in the said agreement contained, and on the part of the said The Central Railroad Company of New Jersey to be kept and performed, and will keep, maintain, and fulfill the same according to their full intent and meaning, and will carry out all other contracts made by or on behalf of The Central Railroad Company of

New Jersey, in which The Lehigh Coal and Navigation Company may have an equitable interest; will develop the business of The Lehigh and Susquehanna Railroad and branches in accordance with the provisions of the said agreement of March 31, 1871, and the terms of this supplemental agreement; and where additional railroads shall be necessary to develop and secure business in the anthracite coal fields east of the line of The Little Schuylkill and Catawissa railroads, will cause them to be built under the provisions of the first and second mutual covenants of the contract of 1871; will cause the development of The Lehigh and Wilkesbarre Coal Company's lands to proceed *pari passu* with that of the lands of The Philadelphia and Reading Coal and Iron Company, so that the production of the two coal estates shall bear to each other the numerical relation of twenty-eight for The Lehigh and Wilkesbarre Coal Company to seventy-two for The Philadelphia and Reading Coal and Iron Company, at least until the production of The Lehigh and Wilkesbarre Coal Company's lands shall reach three million tons per annum, beyond which it shall not be required to be increased, but which shall be maintained till it shall be no longer possible to make the said mines produce at that rate; and if the production of the said lands shall in any one year bear a less ratio to the production of The Philadelphia and Reading Coal and Iron Company's lands than the aforesaid ratio, will send such an amount of coal from The Philadelphia and Reading Coal and Iron Company's, or other anthracite coal lands lying west of Tamanend, over The Lehigh and Susquehanna Railroad from Tamanend, as shall bring the coal tonnage-mileage of the Lehigh and Susquehanna Railroad system up to what it would have been if the above stipulation in regard to the production of The Lehigh and Wilkesbarre Coal Company's lands had been carried out, and will cause the production of the Lehigh and Wilkesbarre Coal Company's lands to pass to or towards its markets over the lines of The Lehigh and Susquehanna Railroad and branches. And it further agrees that the rates of transportation of coal or other freight from or to any property in the anthracite region which may at any time be owned, controlled, or operated by The Lehigh Coal and Navigation Company, shall never be higher than the lowest rates given to any other producer or shipper of anthracite coal for similar consignments and like distances, and that it will join with The Central Railroad Company of New Jersey in carrying out the provisions of the contract between The Central Railroad Company of New Jersey and the Alliance Coal Mining Company, of August 10, 1881, a copy of which, marked "Exhibit B," is hereto annexed.

Fourth. And the said The Philadelphia and Reading Railroad Company further covenants and agrees that the aggregate rental of The Lehigh and Susquehanna Railroad, after the date of this agreement, shall never in any year be less than $1,414,400, but if the one-third of the gross receipts from the operation of The Lehigh and Susquehanna Railroad (settlements for which shall be made monthly as heretofore) shall not amount in any year to the said sum, The Philadelphia and Reading Railroad Company will nevertheless pay at the end of the calendar year such additional sum as will make the rental of The Lehigh Coal and Navigation Company from the said Lehigh and Susquehanna Railroad and branches equal thereto; and in consideration of this undertaking The Lehigh Coal and Navigation Company covenants and agrees that after it shall have received from its one-third of the gross receipts derived from the operation of the said Lehigh and Susquehanna Railroad and branches during any calendar year prior to December 31, 1887, the sum of $1,728,700, or in any calendar year thereafter prior to December 31, 1892, the sum of $1,885,800, or in any calendar year thereafter the sum of $2,043,000, together with a further sum in each year equal to 7 per cent upon the amounts which shall be charged after December 31, 1882, upon the books of The Lehigh Coal and Navigation Company for payments for right of way or for expenditures made or to be made by The Central Railroad Company of New Jersey or the Philadelphia and Reading Railroad Company for construction, as shown by the accounts rendered or to be rendered by either of the said corporations under the first and second of the mutual covenants in the original agreement of March 31, 1871, as will waive, relinquish, and release and does hereby waive, relinquish, and release, the surplus or excess of its one-third share of the said gross receipts to the said The Philadelphia and Reading Railroad Company, but nothing herein contained shall be deemed or taken to release The Lehigh Coal and Navigation Company from paying 7 per cent on the amount already advanced by The Central Railroad Company of New Jersey and on the amounts hereafter expended, and which are repayable by the Lehigh Coal and Navigation Company, as provided by the agreement of March 31, 1871, until The Lehigh Coal and Navigation Company shall have refunded such advances. And The Central Railroad Company of New Jersey hereby agrees that the sums herein stipulated to be paid and which it agrees may be paid to The Lehigh Coal and Navigation Company shall be in lieu and satisfaction of the rent reserved in the agreement of May 29, 1883, between The Central Railroad Company of New Jersey and The Philadelphia and Reading Railroad Company (a copy of which, marked

"Exhibit C," is hereto annexed) as accruing under the provisions of the agreement of March 31, 1871; and upon the payment by The Philadelphia and Reading Railroad Company to The Lehigh Coal and Navigation Company, its successors and assigns, of the sums herein stipulated to be paid the said The Philadelphia and Reading Railroad Company shall be relieved from said portion of the rental reserved in the agreement of May 29, 1883, aforesaid, and the excess or remainder, if any, of said gross receipts, after making the payments herein stipulated to The Lehigh Coal and Navigation Company, shall be retained by The Philadelphia and Reading Railroad Company for its own use and benefit.

Fifth. And the parties hereto further agree that in case of any difference of opinion between the parties hereto in relation to any of the provisions of this agreement, or in case either party shall be dissatisfied with the manner in which the business is done by the other party, the matters in dispute shall be referred to arbitrators, one to be appointed by The Philadelphia and Reading Railroad Company and one by The Lehigh Coal and Navigation Company, and the two thus chosen to select a third, and their decision or that of a majority of them shall be final and conclusive.

Sixth. And all the parties hereto agree that in case of any breach of covenant on the part of the parties of the second or third part, if the same shall not be fully compensated within a reasonable time, the party of the first part may, at its option, declare the agreement of March 31, 1871, to be terminated and the agreements therein contained and this agreement to be rescinded, and may thereupon enter on the demised premises as and for condition broken and repossess itself of its old and former estate, and may resume, take, use, and enjoy all its original rights, privileges, and franchises, as if this agreement and the said agreement of March 31, 1871, had never been made.

In witness whereof, the parties hereto have caused their corporate seals, duly attested, to be hereunto affixed, the day and year first above written.

J. S. HARRIS, *President.*

Attest:
S. SHEPHERD, *Secretary.*
[Seal L. C. & N. Co.]

H. S. LITTLE, *President.*

Attest:
SAML. KNOX, *Secretary.*
[Seal C. R. R. Co. of N. J.]

FRANKLIN B. GOWEN, *President.*

Attest:
ALBERT FOSTER, *Secretary.*
[Seal P. & R. R. R. Co.]

EXHIBIT C.

This agreement, made this 27th day of January, A. D. 1887, between the president, managers, and company of the Delaware and Hudson Canal Company, hereinafter referred to as the Delaware Company, and The Lehigh Coal and Navigation Company, hereinafter referred to as the Lehigh Company.

Whereas the Delaware Company did on the 7th day of November, 1886, take control of the Union Coal Company's railroad, hereinafter called the Union Railroad, which railroad had theretofore been operated jointly by the Lehigh Company and the Delaware Company, and has furnished the connection between Union Junction, the terminus of the Lehigh and Susquehanna Railroad of the Lehigh Company, and Scranton; and

Whereas the Lehigh Company, itself or through the Wilkesbarre and Scranton Railway Company, a corporation controlled by it, has purchased ground for terminal facilities at Scranton, and has located and proposes to build a line between Scranton and a point near Minooka Station, hereinafter called Minooka Junction, and proposes also to build or to procure the building of, and to use, when built, a cut-off line from Laurel Run Station, on the Lehigh and Susquehanna Railroad of the Lehigh Company, to a connection with the Union Railroad near Pittston Station, at a point hereinafter called Pittston Junction; and

Whereas both parties hereto agree that it is desirable to make such use of the existing lines of railroad as to meet the requirements of the public in the matter of transportation, and for this purpose the Delaware Company is willing to grant permanent rights to the Lehigh Company for so much of the said Union Railroad as the Lehigh Company may desire to use as hereinafter provided; and

Whereas the object of this agreement is to furnish the Lehigh Company with a line of railway connecting its present railway at Union Junction with the proposed railway from Minooka Junction to Scranton, and also with the proposed railway from Laurel Run Station to Pittston Junction, over which connecting line its traffic shall pass freely, and from which it can not be excluded by reason of any adverse interest obtaining control of the management of the Delaware Company's line:

Now this agreement witnesseth:

First. That the Delaware Company has granted, demised, and let, and by these presents doth grant, demise, and let, unto the Lehigh Company, for a period of nine hundred and ninety-nine years from the date of this agreement, subject to the reasonable regulation and control of the lessor as to the movement and government of trains, the right to pass with its trains and locomotives over the aforesaid line of the lessor between Union Junction and Minooka Junction, and vice versa, with the right to use in connection with such trains all present or future water stations, sidings, and other facilities necessary for the accommodation of such trains and the traffic to be transported by them, as freely as if the lessee was the owner of the railroad hereby demised, paying to the lessor, as rent for the demised premises, forty-two and one-half per cent of the gross earnings on all coal, passengers, express, parcel, and freight traffic that shall accrue to such portion of the Union Railroad as it, the lessee, shall use; the total gross earnings in each case being divided in proportion to the actual mileage used of the Union Railway and the Lehigh Company's railroad, provided that if the Lehigh Company shall take water from any of the Delaware Company's water stations, it shall share in the expense of maintaining such stations in proportion to the consumption of water by each of the parties hereto. But the right to haul such traffic over the Union Railroad by the Lehigh Company's locomotives shall not apply to business originating at points north of Scranton on the Delaware Company's lines, or on the connecting lines forming the extensions thereof and destined to points south of Pittston Junction or Wilkesbarre on the Lehigh Company's lines, or on connecting lines forming the extensions thereof or originating at points south of Pittston Junction or Wilkesbarre on the Lehigh Company's lines, or on connecting lines forming extensions thereof, and destined to points north of Scranton, on the Delaware Company's lines, or on connecting lines forming extensions thereof; all of which business shall be hauled by the Delaware Company's locomotives as provided in section third.

Second. The Lehigh Company shall have the right to make a connection between the Union Railroad tracks and the tracks of the line to be built from Laurel Run Station to Pittston Junction, and also a connection between the Union Railroad tracks and the tracks of the Spring Brook Railway near Moosic Station; and also a connection between the Union Railroad tracks and the tracks of the Lackawanna and Bloomsburg Railroad at such point between Moosic and Minooka as may be agreed on with the Delaware, Lackawanna and Western Railroad Company, it being the true intent of this stipulation to enable the Lehigh Company to

secure business from the roads just named; but this right of connecting is not intended to permit it to secure business from other points on the Delaware Company's lines by means of lateral or auxiliary tracks leading thereto from the said Lackawanna and Bloomsburg Railroad and the said Spring Brook Railway, nor to take over the Union Railroad business, which having originated at points south of the parallel of latitude passing through Wilkesbarre, shall reach Wilkesbarre by other roads than the Lehigh and Susquehanna Railroad, and shall be destined to points on the Union Railroad east of Wilkesbarre or to other points on the Delaware Company's lines.

Third. It is agreed for the present that through freight traffic originating at or destined to points on the Delaware Company's lines north of Scranton or on connecting lines forming extensions of the Delaware Company's lines; and through freight traffic destined to or originating at points on the Lehigh Company's line south of Wilkesbarre or on connecting lines forming extensions of the Lehigh Company's lines, shall be exchanged at Wilkesbarre, and shall be hauled by the Delaware Company's locomotives over the Union Railroad, and that the Delaware Company, for all such freight hauled by its locomotives over the Union Railroad, shall be entitled in the division of the through rate to be credited with at least forty miles from Wilkesbarre, though the distance so hauled may have been less; and similarly, that on all freight so exchanged and hauled by the Lehigh Company's locomotives south of Wilkesbarre, the Lehigh Company shall be entitled to be credited with at least forty miles; but it is further agreed that after the cut-off line from Laurel Run Station to Pittston Junction shall have been completed, the said exchange shall be made at Pittston Junction, in which case each party hereto shall, as before, be entitled to at least forty miles in the division of the through freight rate. But nothing in this section shall be so construed as to require the Lehigh Company to receive less in the division of the freight rate on business of the western cooperative lines than it now receives, except it should assent to such a change.

Fourth. Each party hereto will provide its own time-tables for the running of such trains over its lines as it may desire in carrying out the provisions of this agreement, it being understood that the Delaware Company's trains are to have preference over the Lehigh Company's trains of the same class on the Union Railroad.

Fifth. It is agreed that the parties hereto will extend each to the other as good facilities and rates in every respect as it accords to the most favored of the lines with which it may become connected.

Sixth. Each of the parties hereto shall be permitted to examine such of the books and records or other documents or papers of the other party as may be necessary to verify or confirm settlements proposed or made in accordance with the terms of this agreement.

Seventh. It is intended that the rights of trackage hereinbefore granted by the Delaware Company to the Lehigh Company shall continue during the term of this agreement, and that the successors and assigns of either of the parties hereto shall have the rights and privileges and shall be charged with the duties herein assumed by the parties to this agreement, but the basis of compensation to the Delaware Company for the use of the railroad and other facilities specified in the first section, and the basis of the minimum distances to be charged by either party on through freights as specified in the third section, may be readjusted on the 1st day of January, 1892, and each five years thereafter: *Provided*, That either of the parties hereto shall give ninety days' notice to the other before the expiration of each period of its desire for such readjustment. The basis on which such readjustments shall be made shall be the usual railroad practice existing at the time of such readjustments, and if the two parties shall not be able to agree on this question or on any other question arising under this agreement, the matters in dispute shall be referred to arbitrators, one to be appointed by the Delaware Company and one by the Lehigh Company, and the two thus chosen to select a third, and their decision or that of a majority of them shall be final and conclusive.

Eighth. The Lehigh Company shall have the right to assign its interest in this contract to the Central Railroad Company of New Jersey for the term during which that company shall be the lessee of the Lehigh and Susquehanna Railroad of the Lehigh Company, and the Central Railroad of New Jersey shall thereupon be entitled to have and exercise all the rights and privileges herein granted by this agreement to the Lehigh Company; and the Lehigh Company, upon the termination of the said lease of the Lehigh and Susquehanna Railroad to the Central Railroad Company of New Jersey, shall have the right to resume its rights under this agreement as fully as if they had never been assigned to any other company, but neither of the parties hereto shall have the right to otherwise assign any of its rights under this agreement without the consent in writing of the other party.

Ninth. In case of accident to the trains passing over any part of the Union Railroad that may be used by the Lehigh Company the Lehigh Company and the Delaware Company shall each be held liable for any damage done by such acci-

dents occurring through the neglect or misconduct of its own employees or through the failure or defect of its own equipment. The Delaware Company shall be liable for any damage done through the failure or defect of its roadway or the appurtenances thereto. When damage occurs to the property of the parties hereto through the joint negligence of their employees, neither party shall have recourse against the other, but where damage occurs to the public and one of the parties is compelled to pay the same, the other party contributing to such negligence shall contribute equally to such loss.

Tenth. In case either of the parties hereto shall wilfully violate the terms of this agreement, the other party may terminate the same upon giving six months' notice of its election to do so.

Eleventh. It is agreed that if at any time hereafter the Lehigh Company shall construct or operate any other line beyond Scranton, except as herein provided, this agreement shall cease and determine.

In witness whereof, the said parties hereto have caused their respective corporate seals, duly attested, to be hereunto affixed the day and year first above written.

Sealed and delivered in the presence of—

THE PRESIDENT, MANAGERS AND COMPANY OF THE DELAWARE AND HUDSON CANAL COMPANY,
By
R. M. OLYPHANT,
President.

[SEAL.] (Signed)

Attest:
(Signed) J. C. HARTT,
Treasurer.

By order of the board of managers of the Lehigh Coal and Navigation Company.

[SEAL.] (Signed) J. S. HARRIS,
President.

(Signed) S. SHEPHERD,
Secretary.

[Recorded in Luzerne and Lackawanna Cos., Pa., in Feb. and Mar., 1887.—Certificate of acknowledgment and record not printed.]

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103 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

UNITED STATES OF AMERICA, PETITIONER,
vs.
THE READING COMPANY ET AL.

Answer of the Lehigh Coal & Navigation Company to the petition of the United States of America as far as the same relates to this defendant.

(Filed October 18, 1913.)

This defendant, now and at all times hereafter saving unto itself all and all manner of benefit of exception and otherwise, which can or may be taken to the manifold errors, uncertainties, and imperfections contained in the bill of complaint, for answer thereto, or unto so much thereof as this defendant is advised is material or necessary that it should answer, answering says:

104 First. This defendant admits that it was created a corporation by the special act of the State of Pennsylvania of February 13th, 1822, P. L., 21, and acquired and possesses all the powers and is subject to all the obligations imposed by the said act, together with the acts referred to therein and those supplemental thereto. This defendant further admits that its capital stock and funded debt are as alleged in said bill as of December 31st, 1912.

Under the said act of February 13th, 1822, this defendant acquired all the rights and privileges and was made subject to all the obligations granted and imposed by an act approved March 20th, 1818 (7 Sm. L., 86), entitled "Aan act to improve the navigation of the River Lehigh," authorizing Josiah White, George F. A. Hauto, and Erskine Hazard to improve the navigation of the said river and granting them certain rights and privileges in consideration of the public benefit to be brought about by such improvement. The grantees under the act of 1818 were largely interested in coal mines in Carbon County above Mauch Chunk, and the improvement of the navigation of the river by constructing a slack water navigation therein was for the purpose of transporting to market the coal which they so owned. In pursuance of the above legislation, Messrs. White, Hauto, and Hazard, and subsequently this defendant, constructed a slack water navigation up the river Lehigh as far as Stoddartsville and by means of this canal transported anthracite coal down the river to Easton. Meanwhile, the State of Pennsylvania had constructed the Delaware Division Canal from Easton to Bristol at which latter point tide water transportation in the Delaware River begins. By means of this improvement it was

possible to bring coal from the anthracite region to Philadelphia, and to introduce the use of anthracite in Philadelphia and vicinity. By the act of March 13th, 1837 (P. L., 53), the Lehigh Coal and Navigation Company was authorized to construct and operate a railroad connecting with the slack water navigation of the
105 Lehigh near White Haven over the divide to Wilkes-Barre, in the heart of the Wyoming region. This railroad was constructed, completed, and in operation within the years subsequent to 1837 and it was thus made possible to transport coal from the Wyoming region down the Lehigh to tide water. In 1862 there were disastrous floods on the Lehigh, which swept away a large part of the canal between Mauch Chunk and White Haven and in view thereof the legislature by the act of March 4th, 1863 (P. L., 99), relieved the company of its duty to repair the slack water navigation above Mauch Chunk and imposed upon it the duty and gave it the authority to build a railroad from White Haven to Mauch Chunk. Subsequently by the act of March 16th, 1864 (P. L., 11), the Lehigh Coal and Navigation Company was empowered to extend this railroad from Mauch Chunk down the valley of the Lehigh to the River Delaware and to cross the latter with a bridge to connect with railroads in New Jersey at Philipsburg. The Lehigh Coal and Navigation Company had also purchased large quantities of coal land in the Wyoming Valley and had acquired control of the Honey Brook Coal Company, which owned other coal lands in the Hazelton region. The real inducement, therefore, for the construction of the slack water navigation in the river Lehigh, of the canal along the said river, and of the railroad from Wilkes-Barre to the Delaware, was that the owners of coal lands in Carbon and Luzerne counties might be able to move their coal to market, and had it not been for the ownership of such coal by the same parties who built the said canal and railroad, these important public highways would never have been constructed as and when they were, nor would they have been constructed without the pledge of the faith of the Commonwealth of Pennsylvania that the owners of these successive improvements should be able to insure a reasonable return upon the cost of said improvements by reason of their ability to send the product of their mines to market over the highways thus created.

106 Second. This defendant admits that it is the lessee of the Delaware Division Canal belonging to the Delaware Division Canal Company, running from Easton to Bristol and connecting at Easton with the Lehigh Canal. The said Delaware Division Canal was originally constructed by the State of Pennsylvania and was sold to the Sunbury and Erie Railroad in pursuance of the Act of April 21st, 1858 (P. L., 414), and by the Sunbury and Erie Railroad sold to the Delaware Division Canal Company, which leased its canal and rights to the Lehigh Coal and Navigation Company by lease dated Aug. 20th, 1866. The defendant avers that with

regard to the Lehigh Canal it has exercised such powers as were granted by its charter, and with regard to the Delaware Division Canal it has exercised such powers as were consistent with its charter and with the lease under which it held the said canal, and with the act of assembly under which the said canal was acquired from the State of Pennsylvania as aforesaid.

Third. This defendant admits that it constructed, owns, and formerly operated the so-called Lehigh and Susquehanna Railroad as alleged in the said bill and that it owns and controls more than 13,000 acres of coal bearing lands in the Lehigh region estimated to contain more than $500,000,000 tons of available anthracite coal, from which it produces annually about 3,700,000 tons, shipping the same to the points alleged in the said bill in pursuance of sales contracts previously made. It further admits that it formerly owned over 5,000 acres of coal-bearing lands in the Wyoming region. Of the coal lands in the Lehigh region, the greater part were acquired by the company in 1822 from Messrs. White, Hauto, and Hazard and their associates. The Wyoming coal lands were acquired in 1865, 1867, and 1869. Defendant admits that it owns, maintains, and repairs its breaker delivery tracks apurtenant to its several colliers in the Panther Creek district, which said tracks are connected
107 with the lines of certain common carriers. It denies that it operates any line of railroad as a common carrier in the Panther Creek Valley or elsewhere, although it avers that under its charter it has the right and power to engage in the business of a common carrier.

Fourth. Defendant admits that the so-called Lehigh & Susquehanna Railroad extending from the Wyoming coal region across the Delaware River to Philipsburg was completed in 1868 and was operated until April 1st, 1871, by its builder and owner, this defendant, as alleged in article seven of the said bill. It further admits that the said railroad connects with the roads alleged in said article of said bill.

Fifth. Defendant admits the execution of the lease dated March 31st, 1871, annexed to the said bill, and for the terms of the same, refers to the said lease.

Sixth. Defendant admits the sale of its coal lands and mines in the Wyoming region to the Honey Brook Coal Company in 1873, and the lease of its lands and coal in the Lehigh region to the said company, and the further lease of its canal from Coalport to Bristol to the Central Railroad Company of New Jersey, as alleged in said bill. It further admits that in January, 1878, the lands, mines, and canals so leased in December, 1873, were surrendered, the Lehigh Coal and Navigation Company resuming the possession and operation thereof; the said resumption being upon the authority of the court directing the then receivers of the Lehigh and Wilkes-Barre Coal Company and the Central Railroad Company of New Jersey, none of the foregoing arrangements were made for the purpose of forming any combination or monopoly in the production of anthra-

cite coal, or for stifling competition therein, but simply for business reasons in order to secure the improvement and development of the coal lands and to secure to the railroad as large a tonnage as possible for the purpose of yielding a reasonable return upon its cost.

108 Seventh. Defendant admits the execution by it of the supplemental agreement dated May 29th, 1883, and of the supplemental agreement dated January 27th, 1887, annexed to the said bill and for the terms thereof refers to the said supplemental agreements. Said supplemental agreement of 1883 was entered into by the Lehigh Coal & Navigation Company after the Central Railroad Company of New Jersey had agreed to make a lease of its railroad and other property to the Philadelphia & Reading Railroad Company, including the Lehigh & Susquehanna Railroad. The main purpose of the said suppplemental agreement of 1883 was to prevent the Philadelphia & Reading Railroad Company after its acquisition and control of the said railroad, from diverting the coal tonnage from the Wyoming region and other traffic over the lines of the Philadelphia & Reading Railroad Company to the detriment of the tonnage over the so-called Lehigh & Susquehanna Railroad. The supplemental agreement of 1887 was entered into after the insolvency and receivership proceedings of the Philadelphia & Reading Railroad Company had begun and when the lease and control of the Lehigh & Susquehanna Railroad to and by the said Philadelphia & Reading Railroad Company had determined. Defendant denies any practice by the parties to any of the said agreements or supplemental agreements in any way modifying the terms thereof or affecting the legal validity or interpretation thereof.

Eighth. Defendant admits that approximately six per cent of its total output of coal moves to market over its canal. It further admits that during the existence of the said lease of 1871 and supplements, except in the period from 1873 to 1878, it has owned, mined and sold large quantities of anthracite coal and was and is a potential and an actual competitor of the Lehigh & Wilkes-Barre Coal Company therein. Defendant denies that since 1903 the Lehigh & Susquehanna Railroad has been operated by the

109 Central Railroad Company of New Jersey on a basis of a division of the earnings threfrom or that the Central Railroad Company of New Jersey and the Lehigh Coal & Navigation Company are united in any close alliance or community of interest. From the execution of the supplemental agreement of 1883 down to the year 1901 the one-third of the gross receipts which, under the said lease and supplements, the Lehigh Coal & Navigation Company received as rental never exceeded $2,043,000.00, and the Lehigh Coal & Navigation Company during said period received the said one-third of said gross receipts as rental. In the year 1901, however, and again in the year 1903, and in every year thereafter, the one-third of the gross receipts from the Lehigh & Susquehanna Railroad exceeded $2,043,000.00 and the Lehigh Coal & Navigation Company during

said year received as rental the said sum of $2,043,000.00 plus seven per cent. (7%) on expenditures of the Lehigh Coal & Navigation Company since December 31st, 1882, for improvements and additions to the said line. Since the year 1903 one-third of the gross receipts of the said Lehigh & Susquehanna Railroad has exceeded the said maximum sum in each and every year, the said total revenues increasing from year to year, so that for the year 1912 the one-third of the said gross receipts exceeded the said maximum by the sum of $1,263,728.83.

Ninth. Defendant denies that the operation of the Lehigh & Susquehanna Railroad by the Central Railroad Company of New Jersey under the said agreement or otherwise violated the Act of Congress of July 2d, 1890, in any manner whatsoever, and denies that there has been created or now exists any alliance or community of interest between the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey which is designed to suppress, or the probable effect of which is to suppress, competition between the Lehigh Coal & Navigation Company and the Lehigh & Wilkes-Barre Coal Company in the production
110 and sale of coal, and further avers that there is now and for a long time has been the most acute competition between the Lehigh Coal & Navigation Company and the Lehigh & Wilkes-Barre Coal Company in the sale of anthracite coal.

Tenth. Defendant denies that the said lease of 1871 and the supplements thereto or any covenant therein unduly or unreasonably restricts competition or commerce, and denies that the Lehigh or Delaware Division Canals, or either of them, are or could be made serious competitive factors in the transportation of anthracite coal from the Lehigh, Wyoming, or Schuylkill regions. Defendant further denies that it has any such interest in the operation of the Lehigh & Susquehanna Railroad as to render the transportation over the said railroad of coal mined by it a violation of the commodity clause of the interstate commerce act.

Eleventh. Defendant admits that it owns 500 shares of the stock of the Lehigh & Wilkes-Barre Coal Company out of a total authorized issue of 200,000 shares, having acquired said 500 shares from an individual pledgor, having formerly held the said shares as collateral for a loan of the said pledgor, on which the said pledgor defaulted in September, 1896, whereupon the said Lehigh Coal & Navigation Company caused the said shares to be offered at public sale and brought the same in for the amount of the said loan. Defendant denies that it has in any way acted in concert with the Central Railroad Company of New Jersey in the management of the Lehigh & Wilkes-Barre Coal Company in the suppression of competition. Defendant admits that it owns 83,920 shares out of a total of 90,000 shares of the Alliance Coal Mining Company, and denies that it has ever acted in concert with the Central Railroad Company of New Jersey for the suppression of competition in the sale of anthracite coal by means of the ownership of said shares.

111 Twelfth. Defendant admits that it purchased $507,900 of the capital stock of the Lehigh & Hudson River Railroad Company in 1885 and subsequent thereto, and that together with the Central Railroad Company of New Jersey and others, it guarantees the payment of $1,062,000 of the funded debt of the said Lehigh & Hudson River Railroad Company. Further, defendant admits that the vice president of the Lehigh Coal & Navigation Company is a director of the Lehigh & Hudson River Railroad Company and that a director of the Lehigh Coal & Navigation Company is president of the Lehigh & Hudson River Railroad Company. Defendant denies that of itself, or jointly with the Central Railroad Company of New Jersey, it exercises, directly or indirectly, any controlling influence over the policy and management of the Lehigh & Hudson River Railroad Company.

Thirteenth. Defendant admits that it is the owner of the entire capital stock of the Lehigh & New England Railroad Company and that the president, vice president, secretary, and certain of the directors of the Lehigh & New England Railroad Company occupy similar positions in the Lehigh Coal & Navigation Company. During the period prior to 1871, when the so-called Lehigh & Susquehanna Railroad was operated by the Lehigh Coal & Navigation Company, this company had acquired control of a line of railroad, known as the Lehigh & Lackawanna Railroad, extending from Bethlehem to Chapmans and later extended to Wind Gap. It subsequently acquired the Wind Gap & Delaware Railroad from Wind Gap to Pen Argyle, with branches to Saylorsburg and Bangor. The control of these roads by the Lehigh Coal & Navigation Company was acquired for the purpose of using them as feeders to bring the traffic of certain slate quarries to the Lehigh & Susquehanna Railroad. When the lease of 1871 was made to the Central Rail-
112 road, these two roads were not included and remained in the control of the Lehigh Coal & Navigation Company, being operated by the Central Railroad of New Jersey under short-term leases renewed from time to time down to 1905. In 1904 the Lehigh Coal & Navigation Company was desirous of increasing the traffic over these railroads by securing for them a connecting line with the New York, New Haven & Hartford Railroad into New England. At this time the Lehigh & New England Railroad, through the ownership of its line, the control of connecting lines and traffic arrangements over others, was operating a railroad from Slatington, Pennsylvania, to Campbell Hall, New York, connecting at Campbell Hall with roads running into New England and connecting at Bender's Junction, Pennsylvania, with the Lehigh & Lackawanna Railroad. With a view to extending the traffic over the Lehigh & Lackawanna and Delaware & Wind Gap railroads, the Lehigh Coal & Navigation Company in 1904 acquired the capital stock of the Lehigh & New England Railroad, and through such stock ownership effected a merger of the property of the Lehigh & Lackawanna and Delaware & Wind Gap railroads into the Lehigh & New Eng-

land Railroad. The Lehigh & New England Railroad, thus enlarged, connected with the line of the Central Railroad of New Jersey at Bethlehem Junction and with that of the Lehigh Valley Railroad at Slatington. The said Lehigh & New England Railroad further connects with the New York, New Haven & Hartford, the West Shore, the Erie, and the New York, Ontario and Western Railroad companies at Campbell Hall in the county of Orange and State of New York. It also connects with the Philadelphia and Reading Railway Company at Slatington, with the Pennsylvania Railroad Company at Martins Creek, with the Delaware, Lackawanna and Western Railroad at Portland, and with the New York, Susquehanna and Western Railroad at Hainesburg Junction, and in addition operates its trains under a trackage agreement over the lines of the New York, Susquehanna and West-
113 ern Railroad from Hainesburg Junction to New York tidewater. The Lehigh Coal & Navigation Company desired to secure a direct outlet for its coal from its mines in the Panther Creek Valley to New England points by way of the Lehigh & New England Railroad. After numerous fruitless endeavors to secure from the Central Railroad of New Jersey or from the Lehigh Valley Railroad, a suitable rate and traffic arrangement to form a connecting line with the Lehigh & New England at either of the points of connection with the Lehigh Valley or the Central, the Lehigh Coal & Navigation Company determined to secure, through its stock ownership in the Lehigh & New England Railroad, the construction of an extension of the Lehigh & New England Railroad to Tamaqua, connecting with the tracks of the so-called Panther Creek Railroad. This Tamaqua extension was commenced in 1911 and was completed in the summer of 1912. The reason for the construction of the said Tamaqua extension was to provide the means of transportation for securing an additional market for the coal from the Schuylkill and Lehigh regions and to provide a line of railroad which would compete in rates and facilities with the lines of the Lehigh Valley and Central Railroad Company of New Jersey and connections. The Lehigh & New England Railroad Company as so extended forms the most direct route from the Schuylkill and Lehigh coal regions to New England points.

The result of the extension of the Lehigh & New England Railroad to Tamaqua, as aforesaid, was to introduce a new competitive feature into the transportation situation in the Schuylkill and Lehigh regions, to stimulate railroad competition from said regions to points reached by the Lehigh & New England Railroad and its connections, and to make the shippers from said regions to such points no longer dependent for transportation facilities merely on the Central Railroad of New Jersey, the Philadelphia & Reading Railway Company, or the other carriers formerly serving said regions.

104 Fourteenth. This defendant admits that the said Lehigh & New England Railroad Company carries anthracite coal

mined by the Lehigh Coal & Navigation Company and owned by the Lehigh Coal & Navigation Company at the time of transportation, but denies that the said transportation constitutes a violation of any law.

Fifteenth. Defendant admits that the Lehigh & Hudson River Railroad Company and the Lehigh & New England Railroad Company compete for anthracite coal traffic to New England points. It avers that the said roads are not merely potentially, but actually, in competition for said transportation. Defendant denies that the common control of the said routes has been acquired or now rests in the navigation company and the Central Railroad Company of New Jersey by stock ownership or otherwise, and denies that there is between them any combination, contract, or arrangement in restraint of interstate trade and commerce of a monopolization of any part thereof in violation of the antitrust act in any manner whatsoever. Defendant further denies that there is any unity of ownership or management between it and the Lehigh & New England Railroad Company so as to render the transportation of the Lehigh Coal & Navigation Company's coal over the Lehigh & New England Railroad a violation of the commodities clause of the interstate commerce act and denies that the said companies are one and the same association of persons.

Sixteenth. Defendant denies that the Lehigh Canal has or might be made a practical competitive route of transportation from the anthracite coal fields to tide water. Defendant further denies that there is any community of interest between the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, or the Reading Company and the Lehigh Coal & Navigation Company through directorships, through contracts, or otherwise.

105 Wherefore, this defendant, having fully answered, confessed, traversed, and avoided or denied all the matters in said bill of complaint material to be answered, according to the best knowledge and belief of this defendant, claims the same benefit from this its answer as if it had pleaded the several matters herein stated or any of them, or as if it had demurred to the said bill of complaint; and it humbly prays this honorable court to enter judgment that this defendant be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

THE LEHIGH COAL AND NAVIGATION COMPANY,
By S. W. WARRINER, *President.*

Attest:
ROBT. V. PIERCE, [SEAL.]
Assistant Secretary.

H. S. DRINKER, Jr.,
A. M. BEITLER,
JOHN G. JOHNSON,
Solicitors.

106 STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Robt. V. Pierce, being duly sworn, deposes and says: I am assistant secretary of the Lehigh Coal and Navigation Company, defendant named in the foregoing answer and making the same, and as such I have thereto duly affixed the corporate seal of the said company, and have attested the same by my signature. The said answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to such matters I believe the said answer to be true. The source of my information and the grounds of my belief as to all matters not stated upon my own knowledge are the contents of the books and records of the defendant corporation, and communications made to me from time to time by the officers thereof and other individuals.

ROBT. V. PIERCE.

Sworn to before me this 18th day of October, A. D. 1913.

[SEAL.] WILLIAM M. KITZMILLER,
Notary Public.

Commission expires January 7, 1917.

107 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

UNITED STATES OF AMERICA, PETITIONER,

vs.

THE READING COMPANY ET AL.

(Filed October 21, 1913.)

Answer of the Lehigh and New England Railroad Company to the petition of the United States of America as far as the same relates to this defendant.

This defendant, now and at all times hereafter, saving unto itself all and all manner of benefit of exception and otherwise, which can or may be taken to the manifold errors, uncertainties, and imperfections contained in the petition for answer thereto, or unto so much thereof as this defendant is advised, is material or necessary that it should answer, answering, says:

108 I. As to the first article of said petition, it admits that the Lehigh and New England Railroad Company is a corporation created and existing under the laws of the States of Pennsylvania and New Jersey, with its general office at Philadelphia, Pa., but it has no knowledge respecting the other averments in said arti-

cle, and prays that if same be material, complainant may make proof thereof.

II. In answer to the first paragraph of article 2, subsection 9, of said petition, your respondent admits that it was created a corporation on or about April 2d, 1895, under the general laws of Pennsylvania and New Jersey, having on or about said date, lawfully acquired the property and franchises theretofore of the Pennsylvania, Poughkeepsie and Boston Railroad Company, the latter company having on or about September 5th, 1887, lawfully acquired the said property and franchises at the foreclosure sale of the Pennsylvania, Slatington and New England Railroad Company, a corporation of the States of New Jersey and Pennsylvania, duly created in accordance with the laws of said States by the merger and consolidation of the property and franchises of the Pennsylvania and New England Railroad Company, which was incorporated under the name of the South Mountain and Boston Railroad Company, by the Legislature of New Jersey on March 13th, 1873, and the property and franchises of the Delaware and Slatington Railroad Company, which was incorporated under the provisions of the act of Assembly of the State of Pennsylvania, entitled "An act to authorize the formation and regulation of railroads," approved April 4th, 1868, and the supplements thereto; and your respondent further saith that its authorized capital stock is $7,500,000, of which amount $4,135,000 is issued and outstanding, that its funded debt is $3,650,000, and the amount of its equipment obligations $1,460,000.

As to the matters alleged in the second paragraph of article 2, subsection 9, of said petition, your respondent admits that it owns, leases, or operates, under other tenure, the several lines of rail-
109 road therein mentioned and that in addition thereto since July, 1912, under and by virtue of a trackage agreement with the New York, Susquehanna and Western Railroad Company it operates its engines, cars, and trains over the lines of the said company for the transportation of anthracite coal from the mines of the Lehigh Coal and Navigation Company to the New York tidewater terminal of said New York, Susquehanna and Western Railroad Company at Little Ferry, New Jersey, and that in addition thereto it also owns and operates a line of railroad serving the Lehigh, Bath, Nazareth, and Martins Creek cement regions, extending from a point near Bath in the county of Northampton and State of Pennsylvania, where it connects with the Delaware, Lackawanna and Western, and Northampton and Bath Railroad Companies, to a point of connection with the lines of the Pennsylvania Railroad at Martins Creek, in said county and State, as well as numerous other lines extending throughout Northampton County in said State, serving the slate and other industries in the Danielsville, Pen Argyl, and Bangor slate regions, and it also admits that of its freight tonnage, about twenty-five per cent thereof is anthracite coal.

As to the other matters alleged in article 2, it has no knowledge and asks that the plaintiff make proof thereof, if material.

III. In answer to subsection 3, article 3, your respondent denies that its lines or those of its predecessors were in operation in the anthracite fields as far back as 1870, and states that its said lines were not extended to said fields until July, 1912. It also denies that the transportation of anthracite coal by railroad at the rates now in effect is enormously profitable, at all events so far as it is concerned.

In answer to subsection 4, your respondent states that since July, 1912, the lines of the Lehigh and New England Railroad Company have reached New York tidewater, by reason of the trackage
110 agreement aforesaid with the New York, Susquehanna and Western Railroad Company.

As to the averments in said article, not herein answered, your respondent has no specific knowledge and asks that due proof thereof be made, if same are material.

IV. Your respondent has no knowledge of the allegations set forth in article 4 and if same are material, asks that due proof be made.

V. Your respondent has no knowledge of the allegations set forth in article 5 and if same are material, asks that due proof be made.

VI. Your respondent has no knowledge of the allegations set forth in article 6 and if same are material, asks tht due proof be made.

VII. Your respondent is advised of the existence of the several agreements set forth in article 7 between the Lehigh Coal and Navigation Company and the Central Railroad of New Jersey, but has no knowledge respecting the other allegations therein made, and if same are material, asks that due proof be made.

VIII. Your respondent in answer to the second and succeeding paragraphs of the eighth article, admits that it is controlled to the extent that the ownership of its shares constitutes control, by the Lehigh Coal and Navigation Company, which acquired its entire capital stock in 1904, since when your respondent's lines have been largely extended and improved, the most important extension constructed being that to the mines of the Lehigh Coal and Navigation Company, which has given said company larger and more extensive routes and facilities for the shipment of the output of its mines to market, and avers that said extension has enabled said Lehigh Coal and Navigation Company to ship the anthracite coal mined by it via a new and additional route to New York
111 tidewater, as well as to points reached via the lines of the Lehigh Valley Railroad and its connections, which were not available prior to the extension of your respondent's line to the mines of said Lehigh Coal and Navigation Company, and has opened up an additional route for the shipment of the output of its said mines to the slate and cement regions in Pennsylvania, as well as to upper New Jersey, New York, New England, and other points.

Your respondent denies that competition between the Lehigh and New England Railroad Company and the Lehigh and Hudson River Railway Company has been prevented by reason of the ownership of the capital stock of the Lehigh and New England Railroad Company by the Lehigh Coal and Navigation Company, but, on the contrary, avers that since the purchase of said stock by the Lehigh Coal and Navigation Company the competition between said lines has been greater than at any time in the history of said companies due, in large measure, to the fact that the Lehigh Coal and Navigation Company has supplied your respondent with the capital necessary to improve and extend its lines and to acquire the engines, cars, and other equipment necessary for effective competition with said company. Your respondent further avers that prior to the acquisition of its stock by the Lehigh Coal and Navigation Company, all coal shipments from the Lehigh and Schuylkill anthracite coal regions, destined to New England points via the Poughkeepsie bridge route were transported by the Lehigh and Hudson River Railway Company and that, as a result of the extension of your respondent's line to the mines of the Lehigh Coal and Navigation Company, a large proportion of such tonnage now moves via the Lehigh and New England Railroad Company to said points.

Your respondent denies that the said companies are under common control and avers that the controlling factors in the Lehigh and Hudson River Railway Company have no financial or other interest in the Lehigh and New England Railroad, nor voice or influence in the management and operation thereof.

112 Your respondent denies that the Lehigh Coal and Navigation Company's ownership of the capital stock of the Lehigh and New England Railroad Company violates the commodities clause of the act to regulate commerce or the act of July 2d, 1890.

As to matters not herein answered, your respondent has no knowledge, and prays that proof may be made thereof, if material.

IX. In answer to the ninth article, your respondent avers that it is a competitor of the Central Railroad of New Jersey and other lines in the transportation of anthracite coal and other commodities to New York tidewater, to New England, and other points, and that for many years it has been engaged in the prosecution and enlargement of its business to the greatest extent possible. It has no agreement with the Central Railroad of New Jersey, or any other line, whereby its tonnage is restricted or its field of operations limited. Since its incorporation, and particularly since 1900, it has constantly and continually extended its lines of railroad and increased its usefulness as a common carrier, thereby affording better and greater shipping facilities to its patrons and to the public generally, in the territory in which its operations are conducted. It has opened up to the Lehigh Coal and Navigation Company and its other patrons and to the public generally, additional avenues of communication to New York tidewater and to points in New York, New England,

and the West, and has in all respects conducted its operations as a common carrier fairly and without discrimination.

Your respondent further avers that the continuance of the present status of the Lehigh and New England Railroad, as an independent common carrier, is vital to the welfare of the Lehigh Coal and Navigation Company and to the enormous cement, slate, and other industries served by it, and that any interference therewith would in all probability result eventually in your respondent's railroads passing into the control of other interests more or less competitive
113 therewith and antagonistic to the development thereof, and the territory now served by your respondent's lines.

As to the other averments in said article nine, your respondent has no knowledge, and asks that due proof be made thereof, if material.

X. Your respondent denies that it has committed any act in violation of the commodities clause of the act to regulate commerce or in violation of the provisions of the act of July 2d, 1890.

Wherefore, this defendant, having fully answered, confessed, traversed, and avoided or denied all the matters in said petition material to be answered, according to the best knowledge and belief of this defendant, claims the same benefit from this its answer as if it had pleaded the several matters herein stated or any of them, or as if it had demurred to said petition; and it humbly prays this honorable court to enter judgment that this defendant be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

LEHIGH AND NEW ENGLAND RAILROAD COMPANY,
(Sgd.) By S. D. WARRINER, *President.*

Attest:
(Sgd.) H. F. BAKER,
Secretary.

WM. JAY TURNER, [SEAL.]
JOHN G. JOHNSON,
Solicitors.

114 STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

H. F. Baker, being duly sworn, deposes and says: I am Secretary of the Lehigh and New England Railroad Company, defendant named in the foregoing answer and making the same, and as such I have thereto duly affixed the corporate seal of the said company, and have attested the same by my signature. The said answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as such matters, I believe the said answer to be true. The source of my information and the grounds of my belief as to all matters not stated upon my own knowledge, are the contents of the books and records of the defend-

ant corporation, and communications made to me from time to time by officers thereof and other individuals.

(Sgd.) H. F. BAKER.

Sworn to before me this twenty-first day of October, A. D. 1913.
[SEAL.] (Sgd.) A. E. MAHAN,
Notary Public.

Commission expires March 10, 1917.

115 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed October 22, 1913.)

The separate answer of Wilmington and Northern Railroad Company.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

116 In respect of the allegation of the petition relating to it, admits:

1. That it became a corporation in 1877; that it was the result of a consolidation of "The Wilmington and Northern Railroad Company," of Delaware, and "Wilmington and Northern Railroad Company," of Pennsylvania; that both these companies were organized in 1877, by, or in behalf of, the purchasers at a sale, in December, 1876, had under foreclosure proceedings, of all the property of "Wilmington and Reading Railroad Company," in both Pennsylvania and Delaware and the franchises thereof in Pennsylvania; that the first mentioned company was incorporated by a special act of the General Assembly of Delaware, approved February 22d, 1877 (Del. L., 1877, page 519), and the second under the general laws of Pennsylvania relating to reorganizations by purchasers of rail-

road property and franchises at judicial sale; that "Wilmington and Reading Railroad Company" was itself the result of a consolidation in 1866 of two railroad companies, one of Delaware, afterwards named "The Delaware and State Line Railroad Company," which was authorized to build a railroad from Wilmington to the line of that State in the direction of Parkesburg, Pennsylvania, and the other of Pennsylvania, which was incorporated under a special act of the General Assembly of Pennsylvania, approved April 20th, 1864 (P. L., 525), for the specific purpose of constructing "a railroad from a point on the Philadelphia and Reading Railroad, at or near Birdsboro, in Berks County," and thence to connect with any railroad or railroads then built in the county of Chester, and which afterwards, by an act of said general assembly of March 16th, 1866 (P. L., 209), was authorized to connect its railroad with that of said "The Delaware and Pennsylvania State Line Railroad Company," and, at any time, to consolidate therewith; that this defendant's capital stock issued and outstanding amounts to $1,500,000 divided into shares of $50 each and its funded debt is $887,500.

117 2. It admits that, since prior to 1898, it has owned a railroad extending from Wilmington, Delaware, through Coatesville and Birdsboro, Pennsylvania, a distance of about 71.50 miles to Highs Junction, a point several miles south of Reading.

It admits that at one time it had by contract a qualified right to operate trains over a line—operated since 1896 by Philadelphia and Reading Railway Company—extending from Highs Junction a distance of about 3.52 miles to Reading. But it avers that said right was exercised in pursuance of an agreement of May 16th, 1879, made by and between this defendant and the Philadelphia and Reading Railroad Company, and that said agreement was among those which Messrs. Coster and Stetson, the purchasers of the property and franchises formerly of said last-mentioned company, elected not to assume or adopt, notice to which effect was sent this defendant on November 11th, 1896.

And it avers that this company's line does not, and did not, connect at Reading, or in that vicinity, with the lines of the Pennsylvania Railroad Company.

3. It admits that, until about February 1st, 1900, it operated its line from Highs Junction to Wilmington, Delaware, and, under a temporary arrangement, from Reading, through Highs Junction, to Wilmington, Delaware.

4. It admits that, in 1898, a majority of its capital stock was acquired by Reading Company.

5. It admits that, on or about February 1st, 1900, its lines were leased to Philadelphia and Reading Railway Company and that, continuously since that time, said railway company has operated these lines.

II.

In respect of the allegations of the petition relating to the other defendants, except as herein admitted or denied, it has not
118 sufficient knowledge or information to form a belief and, therefore, asks that strict proof thereof be required, if deemed material.

III.

In respect of the allegations of the petition relating to it, other than those herein admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That, during most of the time, or any substantial part of the time, during which this defendant operated its line, anthracite constituted its principal freight.

It avers, on the contrary, that anthracite has been, and was, a comparatively small part of its freight and that its principal freight generally consisted, and now consists, of iron and steel and the raw materials entering into the manufacture thereof, and next to these agricultural and dairy products.

2. It denies that, in any practical sense of the words, competition, competitor, or competitive, or in any sense thereof that would make a joint ownership of the lines of this defendant and existing lines of Philadelphia and Reading Railway Company obnoxious to existing law (1) prior to 1898, this defendant was transporting, in interstate commerce, passengers or freight in competition with Philadelphia and Reading Railway; or (2) that, since prior to 1901, or at any time, it has been a potential competitor of said railway company in the interstate transportation of anthracite or any other freight; or (3) that the railroad of this defendant and its connections, and the lines of said railway company now constitute, or they have at any time constituted, potentially competitive routes of transportation from the anthracite fields, or any part thereof, to tidewater at the head of Delaware Bay.

It avers that, on the contrary, the line of this defendant is, and has always been, a connecting line with those now owned by
119 Philadelphia and Reading Railway; that the Pennsylvania part of its line was built for a company that was specially incorporated to build a line to connect with the line of the predecessor of said railway company at Birdsboro, a point on said predecessor's main line; and that the line of this defendant is, and always has been, a line supplementary to those now owned by said railway company, the two forming a natural, direct, through route for the transportation of commerce and the accommodation of shippers from points on the lines of either to destination points on the lines of the other, and that the continued maintenance of such natural, direct, through route, instead of tending to restrain trade and com-

merce in any way aids and facilitates the same in precise conformity to the spirit and purpose of the act to regulate commerce.

3. It denies that the acquistion in 1898 by Reading Company of a majority of the capital stock of this defendant either effected, or had any tendency to accomplish, any monopolization of the ownership, production, sale or transportation of anthracite in or from the Schuylkill region, or to continue any such monopolization.

4. It denies that said Reading Company's power to direct the votes upon a majority of the shares of the capital stock of this defendant at the meetings of shareholders at which the president and directors of this defendant are elected, and upon a large majority of the shares of the capital stock of Philadelphia and Reading Railway Company at similar meetings of the latter's shareholders, together with the lease of the lines of this defendant to said railway company on or about February 1st, 1900, constitute a combination in restraint of trade and commerce or a monopolization of any part thereof, in violation of the act of Congress of July 2d, 1890, or of any other law.

5. It denies that, by, or by means of, the acquisition by Reading Company of any stock or any interest, alleged or charged in
120 said petition, there was effected or exists, in violation of any law or otherwise, any confederation or combination of Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey and this defendant, with Lehigh and Hudson River Railway or with the latter and Lehigh and New England Railroad Company.

6. It denies that it is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which it, either alone or in combination with the other defendants or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize, or by virtue of which it, either alone or in such combination does control, regulate, restrain, or monopolize, either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

IV.

For a further and separate answer it alleges:—

1. That it appears by this petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and in

respect thereof this suit can proceed against it to hearing and decree without the presence of said defendants, wherefore the petition is multifarious.

121 Wherefore, this defendant prays that the petition be dismissed as against it with costs.

WILMINGTON AND NORTHERN RAILROAD COMPANY,
By E. B. SHURTER, *Secretary.*

CHARLES HEEBNER, [SEAL.]
Solicitor for Defendant.

122 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed October 22, 1913.)

The separate answer of the Reading Company.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained, for answer thereto, or to *to* so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

123 In respect of the allegations of the petition relating to it, it admits:

1. That it was created a corporation under the name "Excelsior Enterprise Company," by a special act of the General Assembly of Pennsylvania, approved May 24th, 1871 (P. L., page 1089); that that act conferred upon it the same rights, powers, privileges, franchises, and immunities as are conferred in and by an act of the General Assembly of Pennsylvania entitled "An act to incorporate the Pennsylvania Company," approved April 7th, 1870 (P. L., page 025), among which was and is the right to have a capital stock of $100,000 "with the privilege of increasing the same, by a vote of the holders of a majority of the stock present at any annual or special meeting, to such an amount as they may from time to time deem needful;" that in 1873 its name was duly changed to "The National Company," and on December 7th, 1896, to "Reading Company;" that,

on November 6th, 1896, its authorized capital stock was duly increased from $50,000 to $40,000,000, and on December 18th, 1896, from $40,000,000 to $140,000,000, divided into 2,800,000 shares of $50 each, $28,000,000 of this being first preferred, $42,000,000 second preferred, and $70,000,000 common stock, all of which is issued and outstanding; and that its funded debt is about $130,000,000.

2. That the entire then outstanding capital stock of this company was among the assets of the Philadelphia and Reading Railroad Company which on September 23d, 1896, were sold by the receivers of the property of that company, and that of the Philadelphia and Reading Coal and Iron Company, at public sale, duly had in pursuance of a decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, made and entered in the foreclosure suit brought in that court (to April term, 1895, No. 9, in equity), against said companies by the trustee in a certain
124 mortgage executed by them dated January 3d, 1888, and at said sale was purchased by the same parties who, at the trustee's sale had the same day and under the same decree, purchased the property of said railroad and said coal and iron company covered by said mortgage; that this company had not been in active business for some years immediately prior to said sale; that shortly thereafter there were transferred and conveyed to this company substantially the entire capital stocks of Philadelphia and Reading Railway Company and of the Philadelphia and Reading Coal and Iron Company, the entire purchase money mortgage debt of the former—$20,000,000 in one bond—and all other property acquired by said purchasers at said trustee's and at said receivers' sales, which were not by or in behalf of said purchasers conveyed to either Philadelphia and Reading Railway Company or the Philadelphia and Reading Coal and Iron Company; and that included in the property so conveyed to this company were the marine equipment and rolling stock formerly of said railroad company, and almost the entire capital stock and debt of the Schuylkill Navigation Company, formerly held by said railroad company; that in consideration of the conveyance to it of said property, securities, and assets, this company, in addition to assuming certain liabilities, delivered certificates for $139,950,000 of its $140,000,000 capital stock and also $50,369,000 general mortgage bonds, being bonds of an authorized issue of $135,000,000 payable January 1st, 1997, with interest payable semi-annually at the rate of four per cent. per annum, secured by a mortgage and deed of trust to Central Trust Company of New York, dated January 5th, 1897, executed by both this company and said coal and iron company and covering substantially all of the property of both except certain stocks and bonds; that by the terms of said mortgage of this authorized issue of $135,000,000 general mortgage bonds, bonds to the amount of $64,631,000 were reserved for the purpose of providing for the acquisition by purchase or exchange or for the redemption as provided in said mortgage of (1) outstanding

bonds of said railroad company for principal sums amounting to $50,968,277, and (2) of ground rents and bonds of said
125 railroad company secured by mortgage on real estate $1,612,063, and (3) divisional coal land bonds of said coal and iron company, the principal sums of which outstanding on January 1st, 1897, amounted to $12,050,606, and the remaining $20,000,00 of said authorized issue wehe reserved and have been used for one of more of the following purposes, viz, (a) the acquisition of additional shares of stock of Philadelphia and Reading Railway Company and of additional bonds of said railway company to be issued under the latter company's mortgage of November 18th, 1896, (b) for the acquisition or betterment of property upon, along, or appurtenant to properties of one or the other of the mortgagors in said general mortgage, and subject to the lien of said mortgage at the time of such use of the bonds, or upon, along, or appurtenant to lines of railway or terminal properties of some one or more of the other companies mentioned in said general mortgage more than one-half of whose capital stock was pledged in said mortgage, or of some other company of whose capital stock more than one-half, at the time of such use of the bonds, should be pledged under said mortgage, and (c) to reimburse the Reading Company for outlays or advances by it made for, or to promote, any construction or acquisition made pursuant to (a) or (b) on or subsequently to January 1st, 1897; that by the provisions of said general mortgage, the said mortgagors therein undertake punctually and regularly to pay or cause to be paid the interest on all the therein specified bonds of both said railroad company and said coal and iron company for the purchase, exchange, or redemption of which the said $64,631,000 bonds of said authorized issue of $135,000,000 were reserved by the terms of said general mortgage, until such bonds should be paid and discharged or acquired and pledged under said general mortgage; that in 1897 the person who was duly elected president of this company was the same person who, in that year, was duly elected president of said railway company and in the same year was duly elected president of said
126 coal and iron company and that in that year the person who was duly made treasurer of this company was the same person who, in that year, was duly made treasurer of said railway company, and in the same year duly made treasurer of the said coal and iron company; that of the persons who, in 1897—after said transfer of property to this company—constituted the duly elected directors of said railway company, a majority were the same persons as those who constituted a majority of the duly elected directors of said coal and iron company, and the same persons were also that year directors of this company; and this is true of every successive year since that date; that the defendant George F. Baer is president of this company, president of said railway company, and president of said coal and iron company; that the defendants George F. Baer, George F. Baker, Edward T. Stotesbury, Henry

C. Frick, Peter A. B. Widener, Henry A. duPont, Daniel Willard, Henry P. McKean, and Samuel Dickson now constitute the board of directors of this company, said Baker, Stotesbury, Frick, Widener, Willard, and duPont now constitute the board of managers of said railway company, and said Baker, Stotesbury, Frick, Widener, Willard, and McKean constitute the board of directors of said coal and iron company; that the general offices of these three companies, respectively, are in the same building in Philadelphia, and that their respective annual reports showing the results of their respective operations are published in the same pamphlet.

3. That all the equipment acquired since 1898 for use on the lines of said railway company has been acquired and paid for by Reading Company and is pledged under the said general mortgage.

4. That, by the terms of said general mortgage of January 5th, 1897, it is provided that, if the company shall use any of the hereinbefore referred to remaining $20,000,000 bonds of said authorized issue of $135,000,000, for the purpose of acquiring additional
127 shares of stock of said railway company and of additional bonds of said railway company to be issued under the latter's mortgage dated November 18th, 1896, the certificates for all shares of stock so acquired shall be duly transferred into the name of the trustee under said general mortgage and, if practicable, any bonds so acquired shall be transferred in like manner, or, if not susceptible of such transfer, shall be plainly endorsed as the property of the trustee thereunder.

That it is also provided by the terms of said general mortgage that this company shall not in any year declare or pay dividends upon its stock until or unless, prior to, or simultaneously with, such declaration, it shall deliver to the trustee under said mortgage a statement in writing under its corporate seal showing the amount of anthracite coal mined from lands owned by said coal and iron company and covered by said general mortgage, during the year next preceding the declaration of such dividend, and simultaneously shall pay to such trustee a sum equal to five cents per ton on all coal so mined in such next preceding year, if the aggregate of dividends so declared shall be equal to or shall exceed such sum, and otherwise such lesser sum as shall be equal to the aggregate of dividends so declared.

5. That, since the acquisition by this company, in 1896, of the capital stock of said coal and iron company, this defendant has, from time to time, made to said coal and iron company certain temporary commercial loans of the character of those which large business enterprises commonly obtain during months of production prior to sale of product, but these temporary loans have been usually repaid by said coal and iron company, with interest, within a few months after their making.

This defendant avers that the advance of about $12,000,000 alleged to have been made by it to said coal and iron company referred to in said petition and carried on the books of this defendant in its open

account against said coal and iron company, was for the amounts from time to time used in discharging prior liens on the prop-
128 erty of said coal and iron company, generally known as divisional coal land bonds, and that these amounts were obtained from the sale of a part of the $64,631,000 bonds specifically reserved for this and other purposes, by section 3 of article 1 of the said general mortgage of January 5th, 1897, of this defendant and said coal and iron company.

6. That there is carried on the books of this defendant, in an open account with said coal and iron company, the amount—less certain deductions—of that company's debt to the Philadelphia and Reading Railroad Company and its receivers as it stood on November 18th, 1896—amounting at that time to about $69,000,000—together with the above-mentioned accretion; that, on account of interest, other than interest on commercial loans, it has received from the said coal and iron company only the following amounts:

In 1900	$884,850.18
" 1901	886,504.62
" 1902	888,780.61
" 1903	1,582,334.41
" 1904	1,582,477.77
" 1905	1,582,255.21
" 1906	1,583,304.53
" 1907	1,583,914.05
" 1908	1,584,485.40
" 1909	935,003.19
" 1910	743,957.87
" 1911	320,000.00
" 1912	810,998.97
" 1913	2,269,405.15

7. That this company has always paid the interest on the from-time-to-time outstanding bonds issued under said general mortgage of January 5th, 1897.

8. That, in 1898, it acquired a majority of the capital stock of Wilmington and Northern Railroad Company.

129 9. That the Supreme Court of the United States, in the case of the United States vs. Reading Company et al. (226 U. S., 324), in accordance with its opinion in said matter filed, affirmed the adjudication of the Circuit Court of the United States for the Eastern District of Pennsylvania in respect of the so-called Temple Iron Company combination.

10. That, continuously since December, 1896, this company has owned nearly the entire capital stock of the Schuylkill Navigation Company and that, by virtue of such ownership, it can direct the vote upon its share ownership at the meetings of shareholders at which the managers of said Navigation Company are from time to time elected.

It admits that, having in 1898 acquired a majority of the capital stock of Wilmington and Northern Railroad Company, continuously since March 1st, 1900, it has been the owner of an equitable or beneficial interest in 29,785 shares of the capital stock of said railroad

company—being nearly the entire capital stock thereof—subject to the terms, conditions, and provisions of a certain agreement, dated March 1st, 1900, between this defendant, said railroad company, and the Girard Trust Company, trustee, in pursuance of which said 29,785 shares were transferred and delivered to, and are still held by said trustee in trust for the benefit of the holders of certain stock trust certificates issued by said trustee, of which 1,295 for the amount of $1,000 each have been issued and are still outstanding; and that, in accordance with the provisions of said agreement and except as restricted hereby, this defendant can direct the vote upon said shares at the meetings of shareholders at which the directors of said railroad company are from time to time elected.

It admits also that, continuously since December, 1896, it has been the owner of an equitable or beneficial interest—subject to the liens and pledges set forth in the general mortgage of January 5th, 1897, hereinabove referred to—of almost the entire capital stock of
130 Philadelphia and Reading Railway Company and almost the entire capital stock of the Philadelphia and Reading Coal and Iron Company and that, in accordance with the provisions of said general mortgage and except as restricted thereby, it can direct the vote upon said shares of stock at the respective meetings of share holders at which the president and managers or directors of said respective companies are from time to time elected.

It admits also that in January, 1901, it agreed to purchase from the owners and holders thereof 145,000 shares of the capital stock of the Central Railroad Company of New Jersey—being a majority of the shares of said railroad company—and that these shares were afterwards transferred to this defendant in consideration, among other things, of the execution by it of a certain purchase money collateral indenture to secure an issue of bonds for the aggregate principal sum of $23,000,000; whereupon this defendant, in order to secure the payment of the principal and interest of all such bonds as should at any time be issued and outstanding thereunder, under date of April 1st, 1901, made, executed, and delivered to the Pennsylvania Company for insurances on lives and granting annuities, a corporation of Pennsylvania, as trustee, a purchase-money collateral indenture, and assigned, transferred, and pledged to said Pennsylvania Company, as trustee, among other things, the said 145,000 shares of stock; that, upon the execution of said indenture, a certificate or certificates of the Central Railroad Company of New Jersey were issued and registered upon the books of said railroad company in the name of said the Pennsylvania Company for insurances on lives and granting annuities, as trustee, which were then and there delivered to said trustee which still remains the owner and holder thereof, under the trusts set forth in said indenture; that there were then issued, and now remains outstanding and unpaid in the hands of the public $23,000,000 in amount of the bonds of this defendant, the payment of the principal and interest, whereof

131 is secured by said assignment, transfer, pledge, and deposit of said certificate or certificates representing said 145,000 shares of the capital stock of said railroad company.

It admits that, continuously since April 1st, 1901, it has been, and still is, the owner of an equitable or beneficial interest—subject to the liens and pledges set forth in said purchase money collateral indenture in said 145,000 shares of stock, and that, in accordance with the provisions of said indenture and except as restricted thereby, it receives the divididends from time to time accruing thereon and can direct the vote upon said shares of stock at the meeting of shareholders at which the managers or directors thereof are elected.

It admits that the defendant, George F. Baer, was elected president of the Central Railroad Company of New Jersey not long after the acquisition of said shares by this defendant and has been elected such president every successive year since that time.

It also admits that at present Messrs. Baer, Baker, and Stotesbury, directors of this defendant, are directors of the Central Railroad Company of New Jersey.

II.

In respect of the allegations of the petition relating to Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, Wilmington and Northern Railroad Company, the Central Railroad Company of New Jersey, and the Lehigh and Wilkes-Barre Coal Company, it refers to the respective answers of these companies which have been exhibited to it, hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other
132 defendants and others, except as herein or hereby admitted mitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, asks that full proof thereof be required if deemed material.

IV.

In respect of the allegations of the petition relating to it, other than those herein or hereby admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That this company, either in 1896 or at any other time, was made—either by the reorganizers of the properties and business of the Philadelphia and Reading Railroad Company and those of the Philadelphia and Reading Coal and Iron Company, or by any other persons or parties—an instrument to accomplish any unlawful or

improper purpose or to accomplish a lawful purpose in an unlawful or improper way.

It avers that the plan for the reorganization in 1896 of the business and properties of the said companies was prepared and promulgated with the purpose of saving and conserving large investments of the public, which were made in reliance upon the laws of the land, made in compliance with those laws and made in the promotion and furtherance of praiseworthy enterprises, beneficial to the public, and stimulated, fostered, and encouraged by those laws; and that said plan was prepared and promulgated with a view to the continuity of those several enterprises and to their healthy and hearty growth and development; and that said plan was prepared and carried into execution, relying on the law of the State of Pennsylvania as well as that of the United States that "it is not an illegal evasion to accomplish a desired result, lawful in itself, by discovering a legal way to do the thing desired."

2. It denies that this company, Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and
133 Iron Company are one and the same association of persons engaged in mining, selling, and transporting coal, or in any one of these lines of business or otherwise, either under the direction of any of the persons mentioned in said petition or otherwise.

3. It denies that any of the acts or arrangements in said petition charged as having been made by the Philadelphia and Reading Railroad Company through the instrumentality of the Philadelphia and Reading Coal and Iron Company were illegal when made, and denies that they constituted or effected any unlawful combination or monopolization.

And it denies that this defendant, by acquiring both the capital stock of Philadelphia and Reading Railway Company and of said coal and iron company, succeeded to any monopolization of the ownership or production of anthracite in the Schuylkill region or of the transportation or sale thereof amongst the States, or that that acquisition effected any such monopolization.

And it denies that its exercise of the power to direct the votes upon a large majority of the shares of the capital stock of said railway company at the meetings of shareholders at which the president and directors of said company are elected, and upon a large majority of the shares of the capital stock of said coal and iron company at similar meetings of the latter's shareholders, constitutes a combination in restraint of interstate trade and commerce or a monopolization of any part thereof, in violation of the act of Congress of July 2d, 1890, or of any other law.

4. It denies that the lease and sale, made under date of July 12th, 1870, by Schuylkill Navigation Company to the Philadelphia and Reading Railroad Company, was in any sense a combination in restraint of interstate trade or commerce or a monopolization thereof within the meaning of said act of July 2d, 1890, or otherwise, or that

it effected or tended to effect such a combination, such restraint or such monopolization.

134 And it denies that, by the vesting in this defendant of substantially all the capital stock of said Schuylkill Navigation Company any such combination, restraint, or monopolization has been continued or effected.

5. It denies that the action of this defendant in refraining from exacting from said coal and iron company an equitable or beneficial interest, subject to certain liens and pledges, in substantially all the capital stock of which is held by this defendant, prompt or present payment of an amount equal to one-half the interest paid on the from time-to-time outstanding bonds issued under said general mortgage and for which both it and this defendant are primarily liable to the bondholder; or in refraining from collecting, year by year, from said coal and iron company, on account of interest, more than that company has paid as hereinbefore set forth; or any of its acts in respect of said coal and iron company or actions toward it or in its behalf constitute unlawful discrimination against any other shipper along the line of said railway company, or increase, or tend to increase, any power of said coal and iron company over any competitor of the latter, or secure or promote, or tend to secure or promote, any monopolization of the ownership, prduction or sale of anthracite, by said coal and iron company or by this defendant in violation of any law or otherwise.

7. It denies that prior to 1898 the Wilmington and Northern Railroad Company was transporting, in interstate commerce, passengers or freight in competition with Philadelphia and Reading Railway Company; that since prior to 1901, or at any time, said railroad company has been a potential competitor of said railway company in the interstate transportation of anthracite or any other freight; that the railroad of said railroad company and its connections, and the lines of said railway company, do now constitute, or that they have at any time constituted, potentially competi-

135 tive routes of transportation from the anthracite fields, or any part thereof, to tidewater at the head of Delaware Bay.

And it denies that the acquisition in 1898 by this defendant of a majority of the capital stock of said railroad company either effected, or had any tendency to effect, any monopolization of the ownership, production, sale, or transportation of anthracite in or from the Schuylkill region, or to continue any such monopolization.

And it denies that its exercise of the power to direct the votes upon a majority of the shares of the capital stock of said railroad company at the meetings of shareholders at which the president and directors of said company are elected, and upon a large majority of the shares of the capital stock of said railway company at similar meetings of the latter's shareholders, together with the lease of the lines of said railroad company to said railway company on or

about February 1st, 1900, constitute a combination in restraint of trade and commerce or a monopolization of any part thereof in violation of the act of Congress of July 2d, 1890, or of any other law.

8. It denies that any purchases or purchase of anthracite, now or heretofore made, by the Philadelphia and Reading Coal and Iron Company are or were made in furtherance of any monopolization of the ownership, production, sale, or transportation of anthracite acquired, held, or directed by this defendant.

9. It denies that this defendant has at any time monopolized the production or transportation of anthracite in and from the Schuylkill region.

It denies that the purchase by it in 1901 of a majority of the shares of the capital stock of the Central Railroad Company of New Jersey was made in any attempt to extend into any other anthracite region any power of the so-called Reading system, or with the purpose or effect of restricting competition in the production of anthracite or in the shipment, sale, or transportation
136 thereof amongst the States; and it denies that such acquisition has had, or that it tends to produce, any such effect.

It denies that the Philadelphia and Reading Railway Company operates lines parallel or competing in interstate commerce with those of the Central Railroad Company of New Jersey, or with those formerly operated by Wilmington and Northern Railroad Company.

It denies that, by such acquisition, this defendant became a party to any alliance or community of interest between the Central Railroad Company of New Jersey and the Lehigh Coal and Navigation Company, and denies that any contract relation between these two latter companies violates the act of Congress of July 2d, 1890.

It denies that, by or by reason of, such acquisition or otherwise there was effected or exists, in violation of any law, or otherwise, any confederation or combination of either—

(a) The coal businesses of the Philadelphia and Reading Coal and Iron Company, the Lehigh and Wilkes-Barre Coal Company and the Lehigh Coal and Navigation Company;

(b) The Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey, and Wilmington and Northern Railroad Company with Lehigh and Hudson River Railway Company or with the latter and Lehigh and New England Railroad Company;

(c) The canal owned by Schuylkill Navigation Company and the canal operated by the Lehigh Coal and Navigation Company.

And it denies that the said acquisition by this company, or the continued ownership by it of an equitable or beneficial interest—subject to the lien and pledge hereinbefore mentioned—in a majority of the capital stock of the Central Railroad Company of New Jersey constitutes in any sense a combination in restraint of interstate trade and commerce or a monopolization of a part thereof, in violation of the said act of Congress of July 2d, 1890, or otherwise.

137 And this defendant avers that the purchase of these shares of the capital stock of the Central Railroad Company of New Jersey was made by this defendant in the normal and natural course of lawful business development, the system of railroads of said company and those of Philadelphia and Reading Railway Company and the latter's predecessor being, and for more than forty years having been, connecting lines of railroad supplementing each other in the formation of through routes for the transportation of the commerce of the country, each forming the essential and necessary outlet for the interstate and foreign traffic carried by the other in cases where the destination of the traffic is beyond the lines of the system on which it originates, the continued maintenance of which through routes, instead of tending to hinder or restrain trade or commerce amongst the several States or with foreign nations, being of vast importance in aiding and facilitating the same in precise conformity to the spirit and purpose of the act to regulate commerce.

10. It denies that it is a party, directly or indirectly, to any agreement, contract, combination or conspiracy, by virtue of which it, either alone or in combination with the other defendants or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain or monopolize, or by virtue of which it, either alone or in such combination, does control, regulate, restrain, or monopolize, either the production of anthracite, or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

V.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defend-
138 ants therein, for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendants; wherefore the petition is multifarious.

Wherefore this defendant prays that the petition be dismissed as against it with costs.

READING COMPANY,
By J. V. HARE, *Secretary*.

CHARLES HEEBNER, [SEAL.]
Solicitor for Defendant.

129 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed October 22, 1913.)

The separate answer of the Philadelphia and Reading Coal and Iron Company.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

140 I.

In respect of the allegations of the petition relating to it, it admits:

1. That it was created a corporation, under the name of "Laurel Run Improvement Company," by a special act of the General Assembly of Pennsylvania, approved May 18th, 1871 (P. L., 915); that its original name was changed to its present name on December 12th, 1871; that its capital stock issued and outstanding amounts to $8,000,000 divided into shares of $50 each; and that there appears on its books an unfunded debt, exclusive of current liabilities, of $72,980,171.62, and a funded debt of $1,080,000.

2. It admits that since long prior to 1901 it has owned about 83,000 acres, and held by lease about 14,500 acres of coal-bearing lands in the Schuylkill region; and it avers that of the coal lands so owned by it about 76,000 acres were acquired prior to 1872, and all of them prior to 1880, and of the said coal lands leased by it, all said acreage was leased by it prior to 1885.

And it admits that practically continuously during that time it has mined anthracite therefrom and has shipped some of it, together with some purchased by it from other producers, to the principal eastern, southern, and western markets, including amongst the former New York City (Manhattan), Brooklyn, Trenton, Philadelphia, Camden, Wilmington, Chester, Baltimore, Washington, New London, New Haven, Providence, Newport, Fall River, New Bedford, Boston, Portland, and other points in New England and on Long Island Sound. But it avers that the said coal shipped by it to the points above named, except some of that shipped to Boston and to New Bedford, is sold by it in the State of Pennsylvania.

3. It admits that anthracite is a valuable article; that in recent years the average yearly production has been about 65,000,000
141 gross tons; that the value of the output of anthracite ranks high in the scale of values of mineral products in the United States; and that the smaller sizes are extensively used for steam purposes in New York City, Boston, and other large cities of the East.

It admits that, with few exceptions presently unimportant, the only known deposits of anthracite of present economic value underlie an area in neighboring counties of eastern Pennsylvania, and that the deposits thereof extend to and are included within the districts of the said State substantially as described and set forth in the plaintiff's petition; but, if the allegations of said petition in this respect and in respect of comparative areas and distances are pertinent or material, it asks that strict proof thereof be made.

4. It admits that, by September 23d, 1896, and long before that time, it had acquired and then held the major portion of the shares of capital stock of Tremont Coal Company, Fulton Coal Company, Preston Coal and Improvement Company, Delaware Coal Company, Mammoth Vein Coal and Iron Company, and Locust Gap Improvement Company, owning together about 9,000 acres of anthracite coal lands in the Schuylkill region.

It avers that the lands of all these companies, excepting those of the Fulton Coal Company, have been leased to it since prior to 1885.

And it avers that all the shares of stock in said coal companies and all the coal lands purchased or acquired by it as hereinbefore set forth, were purchased and acquired by it in the normal and natural course of the lawful business of this defendant, in the exercise of lawful powers plainly granted by its charter and in pursuance of the plain and lawful purposes of its incorporation, and that said lands were acquired by it with the intention of mining them as it became practicable so to do and to secure to this defendant the means to compete, and to continue to compete, in the markets in the production and sale of a commodity for the mining and sale of which it was organized under the law.

142 5. It admits that, from the lands theretofore purchased or acquired by it and from the lands of the said coal companies, the major portion of whose capital stocks were so as aforesaid acquired by it, there were produced in 1896 about 7,000,000 tons of anthracite and that, in that year, it purchased anthracite produced by others than this defendant to the amount of about 1,000,000 tons—substantially all of which was shipped by it over the lines of the Philadelphia and Reading Railroad Company.

It avers that, from the time it actively entered upon the business for which it was created, shortly after its incorporation in 1871, it began to purchase coal for resale in the market and that, throughout substantially all the time during which it has conducted its own operations, it has continued, in the ordinary and usual course of business, to make contracts for such sale and resale; and, during the several periods in which its properties were in the hands of receiv-

ers appointed by courts of the United States, namely from May 24th, 1880, to May 16th, 1884, from June 2d, 1884, to January 2d, 1888, and from February 20th, 1893, to December 1st, 1896, the receivers continued, in the ordinary and usual course of business, to make such contracts.

6. It admits that the Philadelphia and Reading Railroad Company which, from the time of the incorporation of this defendant up to September 23d, 1896, held and owned—subject to certain pledges thereof—substantially all the capital stock of this defendant, did, in a thoroughly natural and lawful manner, aid this defendant from time to time with money and credit in large amounts to assist it in acquiring the said coal lands and the shares of other coal mining companies and to enable it to develop the same and to acquire shipping and marketing facilities and thereby to increase its production and sales of anthracite.

It admits that, up to September 23d, 1896, for the several objects hereinabove stated, said railroad company had advanced to it upwards of $65,000,000, and had guaranteed, as to principal and interest, about $12,000,000 of the bonds of this defendant which
143 had been issued by it in part payment of the purchase money for certain of its coal lands, and that on said date the claims of said railroad company and of its receivers against this defendant were substantially as follows:

1. A mortgage bond of this defendant, dated July 1st, 1874, for	$30,000,000.00
2. A mortgage bond of this defendant, dated December 28th, 1876, for	10,000,000.00
3. Loan account, representing cash advances	24,879,336.16
4. Current business account approximating	4,300,000.00

But it avers that said guarantee was made, and that by far the largest part of said indebtedness had accrued, long prior to 1890, and most of it prior to 1887, and that said guarantee and said advances were authorized by law and were made in compliance and accord with law.

It admits that no interest was paid by this defendant on these advances and that the interest and sinking fund charges on the said $12,000,000 bonds of this defendant, guaranteed by said railroad company, were at times paid by the latter company.

7. It admits that, in February, 1892, it contracted to purchase at the mines the entire output of anthracite of the Lehigh Valley Coal Company and that of the Lehigh and Wilkes-Barre Coal Company.

And it admits that in August of that year upon a preliminary application heard upon information, answers, affidavits, and limited ex parte proofs in a proceeding in the Court of Chancery of New Jersey in which John P. Stockton, attorney general of New Jersey, was plaintiff, and the Central Railroad Company of New Jersey, the Port Reading Railroad Company, and the Philadelphia and Reading Railroad Company were defendants (50 N. J. Equity, 52), an injunction was issued forbidding all operations under a certain

lease made in February of that year by said the Central Railroad Company of New Jersey to said Port Reading Railroad Company, because the said lease was made without legal sanction and in
144 violation—as it was held—of the prohibitions of the act of the Legislature of New Jersey of May 2d, 1885 (P. L., 324).

And it avers that after that decision said the Central Railroad Company of New Jersey resumed operation of its own road.

But this defendant avers that said contract to purchase at the mines the entire output of anthracite of the Lehigh and Wilkes-Barre Coal Company was not annulled by any decree in those or any other proceedings.

And this defendant avers that in proceedings in equity brought in March, 1892, in the Court of Common Pleas of Lycoming County, Pennsylvania, by a stockholder of both the Philadelphia and Reading Railroad Company and of the Lehigh Valley Railroad Company against these companies, the Central Railroad Company of New Jersey, the said coal companies, and others, in which it was strenuously sought to procure the annulment of said lease, as well as that of the Lehigh Valley Railroad Company to the Philadelphia and Reading Railroad Company, and to have the said agreements for the purchase of anthracite declared invalid and void, and in which proceedings abundant testimony was taken, the said leases were held to be valid and the said coal purchase contracts were held to be legal and valid transactions. (Arnot *vs.* Lehigh Valley Railroad Company et al.)

8. It admits that in 1893 the Philadelphia and Reading Railroad Company having defaulted in the payment of obligations secured by a mortgage covering not only its property, but that of this defendant, the United States Circuit Court for the Eastern District of Pennsylvania put the properties of both these companies in the hands of receivers; and that on September 23d, 1896, in pursuance of a decree of that court, made and entered in a foreclosure suit brought therein (to April sessions, 1895, No. 9, in equity), all of the properties and assets of these two companies were sold at public sale and purchased by Charles H. Coster and Francis Lynde Stetson in accordance with a plan of reorganization of which J. P. Morgan & Co. were the managers.

145 It admits that on November 18th, 1896, in consideration of this defendant agreeing to join, as co-obligor, in the execution of certain bonds for the aggregate sum of $135,000,000 and in the execution of a certain mortgage to secure the same, of its agreement to grant, pledge, and convey thereunder, as additional security for said bonds, all of its property and franchises of every name and nature, and its assumption and agreement to pay a certain loan of the Philadelphia and Reading Railroad Company for the sum of $1,774,000, said purchasers conveyed to it, inter alia, all the coal lands, mines shares of coal companies, and—with certain exceptions—all other property formerly held by this defendant and acquired by said purchasers at the sale thereof above referred to.

It admits that the mortgage executed by it in pursuance of this agreement, called the general mortgage, and dated January 5th, 1897, is the joint obligation of the Reading Company and of this defendant; that it covers substantially all the properties of both companies, except certain stocks and bonds; that, by its terms, of the authorized issue of $135,000,000 bonds secured thereby, bonds to the amount of $64,631,000 were reserved for the purpose of providing for the acquisition by purchase or exchange, or for the redemption, as provided in said mortgage, of (1) outstanding bonds of the Philadelphia and Reading Railroad Company for principal sums amounting to $50,968,277 and (2) of ground rents and bonds of said railroad company secured by mortgage on real estate, $1,612,063, and (3) divisional coal land bonds of this defendant, the principal sums of which outstanding on January 1st, 1897, amounted to $12,050,606; and that the remaining $20,000,000 of said authorized issue were reserved for one or more of the following purposes, viz, (a) the acquisition of additional shares of stock of Philadelphia and Reading Railway Company and of additional bonds of said railway company to be issued under the latter company's mortgage of November 18th, 1896; (b) for the acquisition or betterment of property upon, along, or appurtenant to properties of one or the other of the mortga-
146 gors in said general mortgage, and subject to the lien of said mortgage at the time of the use of the bonds, or upon, along, or appurtenant to lines of railway or terminal properties of some one or more of the other companies mentioned in said general mortgage, and subject to the lien of said mortgage at the time of the use of the bonds, or upon, along, or appurtenant to lines of railway or terminal properties of some one or more of the other companies mentioned in said general mortgage more than one-half of whose capital stock was pledged in said mortgage, or of some other company of whose capital stock more than one-half, at the time of such use of the bonds, should be pledged under said mortgage; and (c) to reimburse the Reading Company for outlays or advances by it made for, or to promote, any construction or acquisition made pursuant to (a) or (b) on or subsequently to January 1st, 1897; that by a provision of said general mortgage this defendant and its co-obligors therein undertake punctually and regularly to pay or cause to be paid the interest on all the therein specified bonds of both this defendant and the Philadelphia and Reading Railroad Company for the purchase, exchange, or redemption of which the said $64,631,000 bonds of said authorized issue of $135,000,000 were reserved by the terms of said general mortgage until such bonds should be paid and discharged or acquired and pledged under said general mortgage.

9. It admits that it has not yet paid a dividend on its capital stock.

10. It admits that, since December, 1896, Reading Company has, from time to time, made to this defendant certain temporary commercial loans, of the character which large business enterprises commonly obtain during months of production prior to sale of product, but it avers that these temporary loans have been, and are, usually

repaid by this defendant, with interest, wit' a few months after their making.

147 It avers that the amount of what is termed in said petition an advance to it by Reading Company of more than $12,000,000, is in fact credited to said Reading Company on the books of this defendant in an open account; that this amount of about $12,000,000 represents the amounts from time to time used in discharging prior liens on the property of this defendant, general known as divisional coal land bonds, and that these amounts were obtained from the sale of part of the $64,631,000 bonds specifically reserved for this and other purposes by section 3 of article 1 of the said general mortgage of January 5th, 1897, of this defendant and said Reading Company.

It admits that there still is carried on the books of this defendant, in an open account with Reading Company, the amount—less certain deductions—of the debt of this defendant to the Philadelphia and Reading Railroad Company and its receivers as it stood on November 18th, 1896, and as hereinbefore specifically set out in paragraph 6 hereof.

It admits and avers that, excepting interest on its commercial loans from Reading Company upon which it regularly pays interest at the rate of four per cent per annum, the only amounts which it has paid the said company on account of interest are as follows:

In 1900	$884,850.18
In 1901	886,504.62
In 1902	888,780.61
In 1903	1,582,334.41
In 1904	1,582,477.77
In 1905	1,582,255.21
In 1906	1,583,304.53
In 1907	1,583,914.05
In 1908	1,584,485.40
In 1909	935,003.19
In 1910	743,957.87
In 1911	320,000.00
In 1912	810,998.97
In 1913	2,269,405.15

148 10. It admits that, in accordance with its practice since the inauguration of its business in the early seventies, and in the exercise of the charter powers with which it was created, it has, since long prior to 1901, in the ordinary and usual course of its business, purchased, and is now purchasing, from other producers, anthracite for resale in the market. It avers that in the fiscal year ended June 30th, 1913, it so purchased about 500,00 tons of anthracite and also purchased about 454,000 tons of bituminous coal.

But it avers that it makes and has made such purchases in violation of no law but in the lawful exercise of lawful and proper powers and in the ordinary and usual course of its business; that it

takes no step or means to influence or constrain any person or party against his own free will and best business judgment to enter into these transactions; and it avers that, if and when made, such purchases and sales are made only because the parties thereto find them mutually advantageous economically and otherwise profitable in the conduct of their respective enterprises.

11. It admits that it is a large owner, producer, and seller of anthracite; but if the allegations of the petition as to the comparative or relative status of this defendant as an owner of unmined deposits of anthracite, as a producer of anthracite, or as a seller thereof, are pertinent or material, it asks that strict proof of these allegations be required.

II.

In respect of the allegations of the petition relating to Reading Company and Philadelphia and Reading Railway Company, it refers to the respective answers of these companies which have been exhibited to it; hereby, on information and belief, admitting all that is there admitted and not herein denied, denying all that
149 is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other defendants and others, except as herein or hereby admitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, asks that full proof thereof be required, if deemed pertinent or material.

IV.

In respect of the allegations of the petition relating to it, other than those herein or hereby admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That anthracite is an article of prime necessity anywhere. It avers that other fuels, including wood, bituminous coal and coke, are for many purposes equally as good and are used throughout large sections of this country and Canada in place of, and to the exclusion of, anthracite.

2. It denies that New York Harbor is the principal market, or the principal distributing point, for anthracite produced or sold by this defendant, or a distributing point at all for this defendant's anthracite, except in respect of occasional and comparatively insignificant shipments.

3. It denies that the action of the Philadelphia and Reading Railroad Company in aiding with its funds and its credit this defendant, in view of the times when, and the circumstances and conditions under which, such aid was given, gave this defendant, or resulted in this defendant acquiring, any unfair or unlawful advantage
150 over any other producer or shipper of anthracite, or that it

worked to the disadvantage of any such shipper or producer o the public; and it denies that such acts of assistance enabled sai railroad company—unopposed or in any other manner—to move t or toward a monopoly of the ownership or production of anthracit along its lines in the Schuylkill region or of the sale thereof in th various States.

4. It denies that the acquisition and long continued holding by th Philadelphia and Reading Railroad Company of the capital stoc of this defendant constituted a combination in restraint of trad and commerce, or a monopolization of any part thereof, within th meaning of any law.

5. It denies that this defendant, the Reading Company and Phila delphia and Reading Railway Company, are one and the same asso ciation of persons engaged in mining, selling, and transporting coal or in any one of these lines of business or otherwise, either unde the direction of any of the persons mentioned in said petition o otherwise.

6. It denies that the action of Reading Company in refrainin from exacting prompt or present payment of an amount equal t one-half the interest on the from-time-to-time outstanding bond issued under said general mortgage and for which both it and thi defendant are primarily liable to the bondholder; or in refrainin from collecting, year by year, greater amounts on account of inter est than have heretofore been paid by this defendant to said Readin Company; or any of said Reading Company's acts in respect of thi defendant or action toward it or in its behalf, constitutes unlawfu discrimination against any other shipper along the line of Philadel phia and Reading Railway Company, or increases, or tends to in crease, any power of this defendant over any of its competitors, o secures or promotes, or tends to secure or promote, any monopoliza tion of the ownership, production, or sale of anthracite by this de fendant or by said Reading Company, in violation of any law o otherwise.

151 7. It denies that any acquisition of stock or holding thereo in said petition alleged, or any agreement, lease, or contrac therein alleged and not herein denied, or that these all together o any of them combined, limit or restrain, or tend to limit or restrai in violation of law or otherwise, either this defendant or the Lehig and Wilkes-Barre Coal Company or the Lehigh Coal and Navigatio Company in their respective activities in the business of mining, pu chasing, shipping, and selling of anthracite; or that they tend eithe directly or indirectly to restrain trade and commerce among the sev eral States or that they result in giving any person or party, o persons and parties combined, the power to control, restrain, o monopolize either the production of anthracite, or its transportatio from the mines in Pennsylvania to market points in other States, o its price or sale in or throughout other States.

8. It denies that it is a party, directly or indirectly, to any agre ment, contract, combination, or conspiracy, by virtue of which i

either alone or in combination with the other defendants or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize or by virtue of which it, either alone or in such combination, does control, regulate, restrain, or monopolize, either the production of anthracite, or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

V.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants
152 therein, for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought, against it and the other corporations and persons named as defendants therein, for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendant, wherefore the petition is multifarious.

Wherefore, this defendant prays that the petition be dismissed as against it with costs.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,
By W. G. BROWN, *Secretary.*

CHARLES HEEBNER, [SEAL.]
Solicitor for Defendant.

153 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY et al., defendants.

(Filed October 22, 1913.)

The separate answer of Philadelphia and Reading Railway Company.

This defendant now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties,

and imperfections in the said petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

I.

In respect of the allegations of the petition relating to it, it admits:

154 1. That it is a corporation of Pennsylvania, duly organized on or about November 17th, 1896, under and in pursuance of the laws of that Commonwealth, by the parties who, on or about September 23d, 1896, at public sale duly had by virtue of a decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, purchased the railroad and franchises formerly of the Philadelphia and Reading Railroad Company—created and then existing by virtue of a special act of the General Assembly of Pennsylvania, approved April 4th, 1833, with its powers enlarged by numerous special and general acts of the general assembly of said Commonwealth—and that said railroad and franchises were duly conveyed to it and are still held by it; that its capital stock was originally $20,000,000, divided into shares of $50 each, and that this was increased on or about April 21st, 1911, to $42,481,700; that, upon conveyance to it, by the purchasers at said sale, of said railroad and franchises and upon this company's accepting the deed of conconveyance therefor and undertaking to do and perform all the acts and things therein cited as contemplated to be done and performed by this company, there were delivered by it, to or for the account of said purchasers, certificates for the entire capital stock of the company as it then was determined, excepting seven shares which were retained one each by the directors in accordance with the desire of the purchasers, and a bond of this company for the principal sum of $20,000,000, dated November 18th, 1896, and payable January 1st, 1997, with interest from date at the rate of six per centum per annum, payable semiannually, said bond being secured by a mortgage of all the property and franchises so conveyed.

2. That on or about November 17th, 1896, it filed with the secretary of state of the Commonwealth of Pennsylvania its acceptance of all the provisions of the constitution of said Commonwealth.

3. That since December 1st, 1896, as owner, lessee, or under
155 other arrangement, it has operated a system of railroads from the Schuylkill region of the anthracite fields southeastwardly, through Reading to Philadelphia and Port Richmond, and from Philadelphia to Chester, all on the Delaware River; and from Philadelphia northeastwardly, through Trenton Junction, to Bound Brook, New Jersey; together with various tributary and branch lines; and that it has ample power under its charter to build branches and laterals.

4. That, since the same date, it has operated tugs and coal-carrying barges from its terminus at Port Richmond to the principal ports of New England, including New London, New Haven, Providence, Newport, Fall River, New Bedford, Boston, and Portland.

5. That, at Philadelphia since December 1st, 1896, and at or near Wilmington since 1900, the lines operated by it have been connected with certain lines operated by the Baltimore and Ohio Railroad Company, thus forming a through route from the said Schuylkill region of the anthracite fields to Baltimore and Washington.

6. That, at Newberry Junction, Pennsylvania, since December 1st, 1896, the lines operated by it have been connected with certain lines operated by the New York Central and Hudson River Railroad Company, thus forming a possible through route to points on the New York Central Lines between Lake Erie and Albany and Boston, including Rotterdam Junction, New York, which is the point of connection between the New York Central and Hudson River Railroad and a line operated by the Boston and Maine Railroad Company.

7. That, since long prior to 1901, anthracite has moved over, or partly over, one or the other of these routes, (1) to Philadelphia, Chester, and Trenton; (2) to Wilmington, Newark, Jersey City, New York City (Manhattan), Brooklyn, and the ports of Long Island Sound and New England, including New London, New
156 Haven, Providence, Newport, Fall River, New Bedford, Boston, and Portland; (3) to Baltimore and Washington; (4) to points between Lake Erie and the Hudson River, on the New York Central Lines; and (5) to points in New England on lines now operated by the Boston and Maine Railroad Company; since December 1st, 1896, being transported to the points in group (1), over the route hereinabove specified, by this defendant alone, and to the other points by that company in conjunction with connecting carriers.

But the quantity of anthracite so transported to any one of these points, except Philadelphia, New York City (Manhattan), Brooklyn, and Lake Erie has been and is relatively very small.

8. That substantially all the output of anthracite not consumed in the vicinity of the mines moves to market over about ten railroad systems, of which the system operated by this defendant, described in paragraph 3 hereof, is one.

9. That New York Harbor and Philadelphia are important markets for anthracite, that Philadelphia is reached by the lines of this defendant and by those of the Pennsylvania Railroad Company, and that a substantial tonnage of anthracite is distributed by water from Philadelphia to points in New England.

10. That it has always been a carrier of anthracite. But it is also, and has always been, a carrier of bituminous coal and of general merchandise. While in the fiscal year ending June 30th, 1912, it transported 11,224,945 gross tons of anthracite, in the same year

it transported 14,806,222 gross tons of bituminous coal and 22,711,791 net tons of general merchandise.

11. That, on or about February 1st, 1900, the lines of Wilmington and Northern Railroad Company were leased to this defendant and that, continuously since that time, it has operated these lines.

157 12. That in each of the years 1906, 1907, and 1908, it paid an annual dividend of thirty per cent on its nominal capital of $20,000,000, in each of the years 1909, 1910, and 1911, it paid an annual dividend of twenty-five per cent on said capital, and since that time an annual dividend of fifteen per cent on its capital of $42,481,700.

13. That, by the terms of its mortgage of November 18th, 1896, securing and authorized issue of $30,000,000 bonds, of which $20,000,000, in one bond, were delivered, as set forth in paragraph 1 hereof, in part payment for the railroad and franchises formerly of the Philadelphia and Reading Railroad Company, it is provided that the remaining $10,000,000 bonds of said authorized issue may be issued and used only to reimburse Reading Company for one-half of the amount of such advances as the latter company, at the request, or with the approval, of this defendant, should make, prior to such issue and subsequently to January 1st, 1897, for one or more of several specific purposes set forth in section 3 of article 1 of said mortgage, and only in accordance with the provisions of that article.

II.

In respect of the allegations of the petition relating to Reading Company, the Philadelphia and Reading Coal and Iron Company and Wilmington and Northern Railroad Company, it refers to the respective answers of these companies which have been exhibited to it, hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is there denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other defendants, except as herein admitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, asks that full proof thereof be made, if deemed material.

158 IV.

In respect of the allegations of the petition relating to it, other than those herein admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That the transportation of anthracite by railroad, at the rates now and for a long time past in force, has been and is enormously profitable.

2. It denies that it was any violation of any State law or of any United States law for the Philadelphia and Reading Railroad Company, in the year 1871, to acquire all the capital stock of the Philadelphia and Reading Coal and Iron Company or to purchase or guarantee the bonds of that company. It avers that the company now bearing that name was incorporated by an act of the General Assembly of Pennsylvania, approved May 18th, 1871, and it is plainly and distinctly provided therein (section 5), that "it shall be lawful * * * for any railroad or mining company existing under the laws of this State to subscribe for or purchase the stock, or to purchase or guarantee the bonds of the company hereby incorporated."

3. It denies that it was the purpose of said railroad company, in acquiring the capital stock of said coal and iron company or in lending its financial assistance to the latter, to control the production of anthracite in the Schuylkill region, or the transportation or sale thereof among the States or to monopolize the ownership or production thereof, or to monopolize the transportation thereof.

It denies that said railroad company did any of the acts or things in said petition charged to have been done by it through said coal and iron company or with the doing of which, if done by the coal and iron company, the railroad company is charged because of its ownership of the stock of said coal and iron company.

And it denies that the control of said coal and iron com-
159 pany by said railroad company by stock ownership constituted a combination in restraint of trade or commerce, or a monopolization of any part thereof, within the meaning of any law.

4. It denies that either the making, on July 12th, 1870, of the lease and contract between said railroad company and the Schuylkill Navigation Company (duly authorized by an act of the General Assembly of Pennsylvania, approved April 14th, 1870, P. L., page 75), and by which the navigation company, which was then heavily indebted to said railroad company, conveyed in fee to the latter company valuable real estate and other property not needed for navigation purposes, or the acquisition by said railroad company of a large part of the outstanding capital stock of said navigation company, was in pursuance of or in furtherance of any plan of said railroad company, or of any other party or parties, to suppress competition by the canal of said navigation company, or to monopolize the transportation of anthracite from the Schuylkill region, or that it tended to any such monopolization.

It denies that after the making of said lease the traffic of said navigation company's canal was diverted to said railroad.

In view of the facts that said canal does not reach any of the points of origin of anthracite, that the deliveries required by the markets for anthracite cannot be effected by said canal, that purchasers of anthracite will not tolerate the slow transportation by canal when rail transportation can be obtained, and that the opera-

tors of said canal cannot economically perform the services required in the transportation or delivery of anthracite, this defendant denies that the operators of said canal are or could be active competitors of the operators of said railroad in the transportation of anthracite from the mines to tidewater at Philadelphia or to any intermediate point; denies that the route via this canal was or is a competitive transportation route with respect to that via said railroad; and denies that the lease and sale to said railroad company by said navigation company was in any sense a combination in
160 restraint of interstate trade or commerce or a monopolization thereof within the meaning of the act of Congress approved July 2d, 1890, or otherwise, or that it effected or tended to effect such a combination, such restraint, or such monopolization.

5. It denies that, prior to 1898, the Wilmington and Northern Railroad Company was transporting in interstate commerce passengers or freight in competition with this defendant.

And it denies that the Wilmington and Northern Railroad Company, since prior to 1901, or at any time, has been a potential competitor of this defendant in the interstate transportation of anthracite or any other freight.

And it further denies that the railroad of the Wilmington and Northern Railroad Company and its connections, and the lines of this defendant, do now constitute, or that they have at any time constituted potentially competitive routes of transportation from the anthracite fields, or any part thereof, to tide water at the head of Delaware Bay.

6. It denies that the railroads and water lines operated since prior to 1901 by this defendant and those operated by the Central Railroad Company of New Jersey, respectively, have at any time constituted, or do now constitute, in any practical sense of the words or in any sense that would make a joint ownership thereof obnoxious to existing law, potentially competitive routes of transportation between the anthracite fields of Pennsylvania and points on the waters of New York Harbor, including either Newark, Jersey City, New York City (Manhattan), or Brooklyn, or the ports of Long Island Sound or New England, including either New London, New Haven, Providence, Newport, Fall River, New Bedford, Boston, or Portland; or that, with their respective connections, they have at any time constituted, or do now constitute, in the sense of words above mentioned, potentially competitive routes of transportation between the anthracite fields and either Trenton, Philadelphia, Camden, Chester, Wilmington, Baltimore, Washington, or
161 points along the Hudson River, or points between Albany and Boston on the New York Central lines or points in central and northern New England on the lines of the Boston and Maine Railroad Company.

7. It denies that either the railroads operated by the Lehigh and Hudson River Railway, with their connections, or those operated

by the Lehigh and New England Railroad Company, with their connections, constitute—in the sense of the words stated in the foregoing paragraph—a route which is potentially competitive with either of the two routes referred to in said preceding paragraph.

8. It denies that it has any interest, direct or otherwise, in the production or sale of anthracite, save as a transporter thereof; that any anthracite is manufactured, mined, or produced by it or under its authority; that it transports, in interstate or foreign commerce, any anthracite in violation of the commodities clause of the act to regulate commerce as amended June 29th, 1906.

9. It denies that this defendant, the Reading Company, and the Philadelphia and Reading Coal and Iron Company are one and the same association of persons, engaged in mining, selling, and transporting anthracite, either under the direction of any of the persons mentioned in said petition or otherwise.

10. It denies that it is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which it, either alone or in combination with the other defendants, or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize, or by virtue of which it, either alone or in such combination, has controlled, regulated, restrained, or monopolized either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

162 V.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition is, therefore, multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendants, wherefore the petition is multifarious.

Wherefore, this defendant prays that the petition be dismissed as against it with costs.

PHILADELPHIA AND READING RAILWAY COMPANY,
By GEO. ZIEGLER, *Secretary.*

CHARLES HEEBNER, [SEAL.]
Solicitor for Defendant.

163 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed October 29, 1913.)

The joint and separate answer of George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A du Pont, Daniel Willard, Henry P. McKean, and Samuel Dickson.

These defendants, now and at all times hereafter, reserving unto themselves and each of them all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said
164 petition contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

I.

In respect o fthe allegations of the petition relating to them, they admit as follows:

1. That George F. Baer is president and a director of Reading Company, president of Philadelphia and Reading Railway Company, president of the Philadelphia and Reading Coal and Iron Company, president and a director of the Central Railroad Company of New Jersey, president and a director of the Lehigh and Wilkes-Barre Coal Company, and a director of the Lehigh and Hudson River Railway Company.

That George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. du Pont, Daniel Willard, Henry P. McKean, and Samuel Dickson are directors of Reading Company, and all of them, except Henry P. McKean and Samuel Dickson, are members of the board of directors of Philadelphia and Reading Railway Company, and all of them, except Henry A. du Pont and Samuel Dickson, are directors of the Philadelphia and Reading Coal and Iron Company.

That George F. Baker and Edward T. Stotesbury are directors of the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, and the latter is also a director of Lehigh and Hudson River Railway Company.

That Samuel Dickson is a director of the Lehigh and Wilkes-Barre Coal Company, of Lehigh and New England Railroad Company, and a member of the board of managers of the Lehigh Coal and Navigation Company.

That Henry P. McKean is a member of the board of managers of the Lehigh Coal and Navigation Company.

That Henry A. du Pont is president of Wilmington and Northern Railroad Company.

165 2. That, in accordance with the provisions of the acts of the General Assembly of Pennsylvania under which Reading Company was created and by which its rights and privileges were given, the directors of said company are authorized and empowered to have and to exercise, in the name and in behalf of said company, all said rights and privileges.

II.

In respect of the allegations of the petition relating to the several and respective defendant companies of which these defendants are respectively officers, directors, or managers, these defendants refer to the respective answers of these companies; hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other defendants and others, except as herein or hereby admitted or denied, these defendants have not sufficient knowledge or information to form a belief, and, therefore, ask that strict proof thereof be required if deemed pertinent or material.

IV.

In respect of the allegations of the petition relating to these defendants, other than those herein or hereby admitted or alleged to be true, they deny each and every one of them, and they specifically deny:

1. That, in the manner or by the means in said petition described, they, or any of them, have been, or are, engaged in any combination or conspiracy in restraint of interstate or foreign trade and commerce, or that they, or any of them, have attempted to monopo-

166 lize or are monopolizing any part of such trade and commerce, or that they have controlled or directed, or taken part in the control or direction, or are controlling or directing or taking part

in the control or direction of, any such combination, conspiracy, or monopolization, in violation of the act of Congress of July 2d, 1890, or otherwise; and every one of said defendants severally denies that he, or any of the defendant companies of which he is an officer, director, or manager, is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which he, or any of said defendant companies, either alone or in combination with the other defendants or any of them or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize, or by virtue of which he or such company, either alone or in combination, does control, regulate, restrain or monopolize, either the production of anthracite, or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States, in violation of said act of Congress or otherwise.

V.

For a further and separate answer they allege:

1. That it appears by the petition that this suit is brought, against these defendants and certain corporations named as defendants therein, for distinct matters and causes, in some of which these defendants, or some of them, are not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought, against these defendants and certain corporations named as defendants therein, for distinct matters and causes, in some of which defendants, other than these defendants or some of them, are not in any manner interested or concerned, and in respect thereof this suit can
167 proceed against these defendants or some of them to hearing and decree without the presence of said other defendants, wherefore the petition is multifarious.

Wherefore these defendants pray that the petition be dismissed as against them with costs.

GEO. F. BAER.
GEO. F. BAKER.
E. T. STOTESBURY.
HENRY C. FRICK.
P. A. B. WIDENER.
H. A. DU PONT.
DANIEL WILLARD.
HENRY P. MCKEAN.
SAML. DICKSON.

CHARLES HEEBNER,
Solicitor for Defendants.

168 In the District Court of the United States, Eastern District of Pennsylvania.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

READING COMPANY, PHILADELPHIA & READING RAILWAY COMPANY, the Philadelphia & Reading Coal & Iron Company, the Central Railroad of New Jersey, the Lehigh & Wilkes-Barre Coal Company, the Lehigh Coal & Navigation Company, Wilmington & Northern Railroad Company, Lehigh & Hudson River Railway Company, and others, defendants.

Answer.

(Answer filed November 1, 1913.)

The answer of the Lehigh & Hudson River Railway Company, one of the defendants herein, to the petition of the United States of America, respectfully shows to this court for answer thereto:

1. It does not known and can not set forth as to its belief or otherwise whether or not any or all of the allegations set forth in subdivisions numbered II, III, IV, V, VI, and VII of the petition, respectfully are true, and therefore denies the same.

169 II. It admits allegation in subdivision numbered VIII of said petition that: "In 1885 the defendants, the navigation company, and the Central Railroad Company, jointly purchased a majority of the capital stock of the defendant, the Lehigh & Hudson River Railway Company, and thereafter jointly advanced large sums for its improvement and extension. Of its present outstanding capital stock—$1,340,000—the navigation company owns $507,900 and the Central Railroad Company $163,300—together a majority; and of its funded debt—$3,229,000—they jointly guarantee payment of $1,062,000 and interest. The president, vice president, and a director of the Central Railroad Company and the vice president of the navigation company are directors of the said Lehigh & Hudson River Railway Company, and a director of the navigation company is its president and also one of its directors."

It specifically denies that it has at any time been a party to any unlawful agreement or combination in restraint of interstate trade and commerce or in monopolization of a part thereof, or done any act or thing to prevent or restrain competition by or between

170 any of the corporations or persons, parties to this suit. That, on the contrary, all and every of the acts of this defendant alleged against it in said Subdivision VIII of said petition were done in good faith to increase and expand trade and commerce between the States, in so far as this defendant was concerned therein or could control the same.

It does not know and can not set forth as to its belief or otherwise whether any or all of the other allegations set forth in said subdivisions numbered VIII of said petition are true, and therefor denies the same.

It avers that the moneys advanced by the said navigation company and the Central Railroad Company for the benefit of this defendant, as alleged in said Subdivision VIII, has all been repaid by this defendant to said companies; that it was so advanced to secure the construction and maintenance of railroads which would enable this defendant to operate and control its railroad from its then western connection at Phillipsburg, N. J., and its eastern connection at Maybrook, N. Y., and to create a line of railroad which could and would compete with the then existing railroad com-
171 panies operating between points in New England and west thereof, and to give and furnish greater, more direct, and more convenient facilities for traffic between said points. That from and after the extension of the railroad of this defendant in the year 1889 and thereafter to this time, the traffic over said railroad of this defendant has greatly increased, and the purposes and results sought to be secured by such extensions have been fully justified and secured, to the great benefit and advantage of the public and of other railroad companies not parties to this suit. That the rates and charges for traffic over said railroad have diminished by a large percentage during said period, and such traffic is now carried over the line of this defendant at as low rates as by any other railroad company operating between New England and the West over any route.

III. It does not know and can not set forth as to its belief or otherwise whether or not any or all of the allegations set forth in subdivision numbered IX of this petition are true, and therefore denies the same.

172 IV. It specifically denies each and every allegation contained in subdivision numbered X of said petition, in so far as any or all said allegations refer or relate to this defendant.

V. It avers by consent duly filed by more than two-thirds in interest and ownership of the capital stock of this defendant, including in such consent the navigation company and the Central Railroad Company, the capital stock of this defendant was in the year 1912 duly increased to the sum of $1,720,000 and that the capital stock representing such increase and of the par value of $380,000 is held in the treasury of said defendant, subject to the disposition and control of the board of directors thereof.

VI. (1) That it appears by the said petition that this suit is brought against it and the other corporations and persons named as defendants therein for distinct matters and causes, in several of which this defendant is not interested or concerned, and that the petition is therefore multifarious.

173 (2) That it appears by the said petition that this suit is brought against it and the other corporations and persons

named as defendants therein for distinct matters and causes, in several whereof the other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of any of the other defendants, wherefor the petition is multifarious.

All of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and prays that the petition herein be dismissed as against it, with costs.

JOHN J. BEATTIE, *Solicitor for the Defendant.*
THE LEHIGH AND HUDSON RIVER RAILWAY CO.,
Office and post office address, Warwick,
Orange County, New York.

174 In the District Court of the United States for the Eastern District of Pennsylvania.

September term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,
vs.
READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, ET AL., DEFENDANTS.

(Filed Nov. 13, 1913.)

The separate answer of the Lehigh and Wilkes-Barre Coal Company.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

In respect of the allegations of the petition relating to it, it admits:

1. Its incorporation in January, 1874, under the general
175 laws of Pennsylvania; the amount of its capital stock and funded debt; its ownership of acreage of coal-bearing lands; and the fact that since its organization it has mined and shipped anthracite from these mines, principally to eastern markets.

2. It admits that its bonded debt, secured by mortgage, is guaranteed by the Central Railroad Company of New Jersey, and that in the remote past the said Central Company advanced to it, for purposes of its business, considerable sums of money. But it denies that said railroad company has in recent years advanced to it any money for purposes of its business, the payment of interest on which, when due, was not exacted.

3. It admits that it is a large owner, producer, and seller of anthracite; that its lands are located principally in the Wyoming region;

and that it produced in 1912, 4,828,070 gross tons, and purchased at the mines for resale about 700,000 tons.

But if the allegations of the petition as to its comparative or relative status as an owner of unmined deposits of anthracite, or as a producer or seller of anthracite, are pertinent or material, it asks that strict proof of these allegations be required.

And it avers, as respects such purchases of coal, that it makes, and has made, such purchases in violation of no law but in the lawful exercise of lawful and proper powers and in the ordinary and usual course of its business; that it takes no step or means to influence or constrain any person or party against his own free will and best business judgment to enter into these transactions; and it avers that, if and when made, such purchases and sales are made only because the parties thereto find them mutually advantageous economically and otherwise profitable in the conduct of their respective enterprises.

It alleges that it has at all times been an active competitor with other coal producing companies in the mining and selling of anthracite.

176 II.

In respect of the allegations of the petition relating to the Central Railroad Company of New Jersey, it refers to the answer of this company which has been exhibited to it; hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

III.

In respect of the allegations of the petition relating to the other defendants and others, except as herein or hereby admitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, denies the same and asks that full proof thereof be required, if deemed pertinent or material.

IV.

In respect of the allegations of the petition relating to it, other than those herein or hereby admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That anthracite is an article of prime necessity anywhere. It avers that other fuels, including wood, bituminous coal and coke, are for many purposes equally as good and are used throughout large sections of this country and Canada in place of, and to the exclusion of, anthracite.

2. It denies that any guarantee of its bonded debt by the Central Railroad Company of New Jersey, or any advance to it by said railroad company for purposes of its business, increases or tends to increase any power of this defendant over any of its competi-

177 tors, or secures or promotes, or tends to secure or promote, any monopolization of the ownership, production or sale of anthracite, by this defendant, in violation of any law or otherwise.

3. It denies that any acquisition of stock or holding thereof, in said petition alleged, or any agreement, lease or contract therein alleged and not herein denied, or that these all together or any of them combined limit or restrain or tend to limit or restrain, in violation of law or otherwise, this defendant in its respective activities in the business of mining, purchasing, shipping and selling of anthracite; or that they tend either directly or indirectly to restrain trade and commerce among the several States, or that they result in giving any person or party, or persons and parties combined, the power to control, restrain, or monopolize either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

4. It denies that it is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which it, either alone or in combination with the other defendants or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize or by virtue of which it, either alone or in such combination, does control, regulate, restrain, or monopolize either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

V.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought
178 against it and the other corporations and persons named as defendants therein, for distinct matters and causes, in some of which this defendant is not interested or concerned, and that the petition, therefore, is multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein, for distinct matters and causes, in some of which other defendants are not in any manner interested or concerned, and that in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendant, wherefore the petition is multifarious.

Wherefore this defendant prays that the petition be dismissed as against it, with costs.

THE LEHIGH AND WILKES-BARRE COAL COMPANY,
By G. O. WATERMAN, *Secretary.*

[SEAL]

JACKSON E. REYNOLDS,
ROBERT W. DE FOREST,
Solicitors for Defendant.

179 In the District Court of the United States for the Eastern District of Pennsylvania.

September Term, 1913. No. 1095. In Equity.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, et al., Defendants.

(Filed November 13, 1913.)

The separate answer of the Central Railroad Company of New Jersey.

This defendant, now and at all times hereafter reserving unto itself all and all manner of benefit of exception and otherwise which can or may be had or taken to the manifold errors, uncertainties, and imperfections in the said petition contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says:

I.

In respect to the allegations of the petition relating to it, it alleges:

That in its inception it was a small local railroad known as
180 the "Somerville and Easton Railroad," incorporated by special act of the Legislature of the State of New Jersey, approved February 26, 1847, and authorized to build a railroad between Somerville and the Delaware River opposite to Easton. That by a supplement to its act of incorporation, approved February 22, 1849, it was authorized to purchase another local railroad extending from Somerville to the Sound at Elizabeth, N. J., which had been constructed under a special act of the Legislature of the State of New Jersey entitled "An act to incorporate the Elizabethtown and Somerville Railroad Company," passed February 9, 1831. By this purchase the Elizabethtown and Somerville Railroad became a part of the railroad authorized to be constructed by the Somerville and Easton Railroad Company. By the same act the name of the company formed by the union of these two local railroads was changed to "The Central Railroad Company of New Jersey," hereinafter called the "Central Company." By a further supplement to the first-named act, approved March 17, 1854, the Central Company was authorized "to erect, build, or extend such wharves, docks, or piers opposite to and adjoining any lands owned by them in the township of Elizabeth, as far in the sound or bay as may be necessary for the purposes of facilitating the transshipment of coal and

their general transporting business; and also to have and hold whatever wharves, piers, lands, or lots, steamboats, sailing vessels, and such other facilities in the city of New York or elsewhere as may be necessary for the management of their business." By the same act the said railroad company was authorized to purchase or lease or operate any railroad which may connect with or intersect their road. All the provisions of this supplement were duly assented to and accepted by the said company.

By a further supplement to such first-named act, approved February 23, 1860, the Central Company was authorized to extend its railroad from Elizabeth to some point or points on New
181 York Bay in the county of Hudson, at or south of Jersey City, and to that end to construct a bridge over Newark Bay.

A further supplement to said first-named act, approved March 21, 1874, enacted after the lease of the Lehigh and Susquehanna Railroad, executed between Lehigh Coal and Navigation Company, hereinafter called the "navigation company," and the Central Company on March 31, 1871, a copy of which is annexed to the petition, contains the following recital:

Whereas "The Central Railroad Company of New Jersey" are the lessees, in perpetuity, of the railroad, branches, and works of the Lehigh Coal and Navigation Company in the State of Pennsylvania, and, in order to secure a paying business for their said railroad and works, it may be advisable and necessary that the said "The Central Railroad Company of New Jersey" should guarantee the payment of such bonds as may be issued, from time to time, by companies owning or working coal land adjacent to any of the said roads or works.

This supplement, therefore, authorizes the Central Company "to guarantee the payment of bonds of any coal company or companies owning or working coal lands along the line of or adjacent to any of the railroads, branches, or works in the State of Pennsylvania so held by lease by the said company, and in which lands the said company may or may have not have an interest."

All of said acts are herein referred to as they are incorporated in the laws of the State of New Jersey for the years named with like effect as if herein set forth at length.

Previous to the year 1871 the railroad, which had begun as a small local road between Somerville and the Delaware River opposite Easton, had been developed under its new title, the Central Railroad Company of New Jersey, into a thorough line extending from the Delaware River to Communipaw, at tide water on New
182 York Bay, opposite the city of New York, and had become one of the chief routes over which anthracite coal, as well as other merchandise, moved from the Delaware River to New York.

The Lehigh Valley Railroad then terminated at Easton. Its president was one of the directors of the Central Company, and anthracite coal from the coal regions served by the Lehigh Valley passed over the Central Railroad of New Jersey from Easton to tidewater in New York harbor as well as the markets in New Jersey.

The Delaware, Lackawanna and Western Railroad at that time connected with the Central Railroad of New Jersey at Hampton, New Jersey, a point a few miles east of the Delaware River, and the anthracite coal from that part of the coal regions served by the said Lackawanna Company was transported over the Central Railroad of New Jersey from Hampton Junction to tidewater at Elizabeth, where the coal docks of the Lackawanna were located.

Until shortly before 1871 the Central Railroad of New Jersey had formed in connection with the Lehigh Valley Railroad, Philadelphia and Reading Railroad, and Pennsylvania Railroad, a very important through route to the west known as the "Allentown Route."

The Central Railroad of New Jersey also connected at Phillipsburg with the Lehigh and Susquehanna Railroad, the railroad of the navigation company, which had been completed in or about the year 1868.

During the period of its development from a small local road, running between Somerville and Easton in 1847, to an important trunk line extending through New Jersey from the Delaware River to New York Harbor, carrying not only its own traffic but the traffic contributed to it from Pennsylvania by its connecting lines, the Lehigh Valley Railroad, the Lehigh and Susquehanna Railroad, the Delaware, Lackawanna and Western Railroad, and the Pennsylvania
189 Railroad, the Central Company had expended large sums in the construction of its railroad, in bridging Newark Bay, in developing terminals at Communipaw and New York City, and in wharves, docks, piers, and other terminal facilities. In order to enable it to do so it increased its stock repeatedly under the authority given to it by the said supplement to the act incorporating the Somerville and Easton Railroad, approved April 5, 1865, and by the supplement to said act approved March 11, 1863, and the supplement approved March 5, 1866. As a result of its having availed of this supplemental authority, the issued capital stock of the said railroad company on January 1, 1871, amounted to $16,182,150.00.

The situation which confronted the stockholders and directors of the Central Company in 1871, at and before the execution of the lease of the Lehigh and Susquehanna Railroad above referred to, was substantially as follows: They had at great expense constructed their railroad as a trunk line to receive at Phillipsburg, opposite Easton, on the Delaware River, and transfer thence chiefly to tidewater at New York, all the traffic brought to that point from Pennsylvania by the Lehigh and Susquehanna Railroad, and by the Lehigh Valley Railroad from the latter's own line and from its connection, the Pennsylvania Railroad. The Central Company had likewise enlarged the facilities of its railroad to handle at Hampton Junction all the traffic so derived from and so destined to the Delaware, Lackawanna and Western Railroad. At large expense it had equipped its railroad with a third rail to accommodate the cars of the Delaware, Lackawanna and Western Railroad, which at that

time were of broad and not of standard gauge. Its railroad and the public served by that railroad were threatened with the loss of the through connections previously existing and the business of these connecting lines, for the accommodation of which the Central Railroad had been in large part constructed, and the loss of which
184 would have again reduced that railroad to the position of a small local road without any remunerative use for the enlarged facilities provided.

For some years prior to 1871 the Lehigh Valley Railroad Company had been contemplating a secession from the through-routing alliance with the Central and had adopted the policy of establishing a route of its own under Lehigh Valley control which should reach from the anthracite mines to tidewater. In consummation of this long contemplated plan the Morris Canal and Banking Company set about securing legislative sanction to lease in perpetuity their property. As a result of that effort, such sanction was accorded by the Legislature of New Jersey, March 14, 1871, by Chapter CLIII of the statutes of that year. Shortly thereafter the Lehigh Valley announced that it had become the lessee of the properties of the Morris Canal and Banking Company and took over their operation. In pursuance of the same policy the Lehigh Valley contemporaneously sought to obtain, and did obtain, an interest in the New Jersey West Line Railroad Company, chartered to build a line of railroad from the Delaware River to Newark, New Jersey, fourteen miles of which was at that time in operation, and thirteen additional miles of which were under construction.

This policy, thus overtly evidenced by these public acts early in 1871, is still further reflected in the later activities of the Lehigh Valley in securing the incorporation of the Eastern and Amboy Railroad Company to build a line from Phillipsburg to Perth Amboy early the following year under Chapters CX and CCCCL of the Laws of New Jersey of that year. Pursuant to the authority of said laws the Lehigh Valley thereafter entered upon the construction and operation of the railroad contemplated under these acts.

By the end of 1870 the previous long-standing relations of the Central with the Delaware, Lackawanna and Western Railroad were likewise in jeopardy. On December 10th, 1868, the last-
185 named company had leased the Morris and Essex Railroad, extending from the Delaware River at Phillipsburg, New Jersey, to tidewater at Hoboken, New Jersey. Although the Central and the Delaware, Lackawanna and Western were parties to a perpetual contract under which the business of the latter was to be delivered to the former at Hampton and transported thence over the Central's lines to tidewater, the Delaware, Lackawanna and Western had broken that contract by diverting all of its passenger traffic and its freight traffic, other than anthracite coal, to its newly acquired leased line, the Morris and Essex Railroad. It was likewise apparent that it was routing its coal traffic by the Central only as a matter of temporary convenience until it could develop its own

facilities to accommodate the coal traffic via its leased line to Hoboken. The Central began a suit to enforce the terms of the existing traffic agreement, but it was apparent to its stockholders and directors early in 1871 that it was inevitable that in the immediate future the business received from the Delaware, Lackawanna and Western Railroad would be lost to the Central.

The physical connection between the Lehigh and Susquehanna Railroad of the Navigation Company, and the Morris and Essex Railroad had been made March 14th, 1868. In September of that year those two companies entered into traffic arrangements for the through movement of the former's coal over the latter's railroad to Hoboken, New Jersey. On December 10, 1868, the Morris and Essex Railroad had, however, fallen into the hands of the navigation company's competitor, the Delaware, Lackawanna and Western Railroad. The navigation company had no arrangements for through routing of freight other than anthracite coal, nor for passengers.

The "Allentown Route" to the West, made up in part by the Pennsylvania Railroad in connection with the Central's line from Elizabethport to Easton, had been disrupted, and all the pre-
186 existing through traffic diverted from it to other channels several years before in consequence of conflicting alliances formed by the Pennsylvania Railroad with lines of railroad in New Jersey competitive with the Central. This had been accomplished by the building of the Connecting Railroad, which was completed by the Pennsylvania Railroad Company in 1867, which thereafter routed its traffic via said Connecting Railroad and the system of the New Jersey lines consolidated by virtue of Chapter LXIX of the Laws of 1867 of that State, approved February 27th, 1867. This arrangement was working toward a more definite basis during the intervening years and was finally crystallized into essentially its present permanent form on October 31, 1871, by a lease to the Pennsylvania Railroad of the New Jersey lines so consolidated by the new proprietary company, the United New Jersey Railroad and Canal Company.

In this posture of affairs the Central, having lost all of the traffic of the Pennsylvania Railroad; having already lost a great part of the traffic of the Lehigh Valley Railroad, with certain assurances of the immediate prospective loss of the remainder; and having lost all of the passenger and general freight traffic of the Delaware, Lackawanna and Western Railroad, with certain assurance of the immediate prospective loss of the remaining anthracite coal traffic of that company, was confronted with the alternative of either abandoning the competition with its rivals and becoming a mere local railroad in the State of New Jersey, or embarking upon an aggressive competition with those rivals. It chose the latter course, and instead of surrendering, carried its competitive measures into the heart of the anthracite coal region by leasing the Lehigh and Susquehanna Railroad of the Navigation Company on March 31,

1871, under an indenture of lease made a part of the petition in this case as Exhibit A.

187 This lease was in the interest of the public as creating and maintaining a through route; it was in the interest of the Central stockholders, because by it they secured for their company a permanent Pennsylvania connection; it was in the interest of the stockholders of the navigation company, because by it they secured an outlet to the great tidewater market for their coal.

This defendant denies that said lease violates the act of Congress of July 21, 1890, or suppresses competition between the navigation company and any coal company in which the Central Company is a stockholder. It denies that such lease, by requiring the navigation company to ship three-fourths of its coal output over the railroad lines owned by it and operated by the Central Company, or by providing that rates between points common to the canal owned and operated by the navigation company, and the railroad owned by the navigation company, but operated by the Central Company, violates the said act of Congress.

II.

Under the circumstances and qualifications set forth in the above allegation, it admits the allegations of that part of the petition numbered II, under the title "4, the Central Railroad Company of New Jersey," except that it alleges that it has other powers than those given by the Pennsylvania act of April 4, 1868, in the petition referred to.

It denies that at the present time, or recently, it has operated barges or other vessels from its termini in New York Harbor to any points on Long Island Sound and in New England, and while it admits that the railroads operated by it connected at the points named with the Pennsylvania Railroad at Pillipsburg, with the Lehigh & Hudson at Easton, with the Lehigh & New England in Pennsylvania, and with the National Docks Railway at Ster-

188 ling Junction, and via car floats with other lines in New York Harbor, it denies that it so connects by any agreements forming any through routes, otherwise than as any connecting railroad joining in through rates may be deemed to so connect.

Under the said circumstances and qualifications, it also admits the allegations contained in that part of the petition numbered VII, entitled "Alliance between the Central Co. and the Navigation Co.," except that, (1) it denies that in December, 1873, it "controlled" the Honeybrook Coal Company in any other sense than in so far as the then ownership of a majority of the stock of the said Coal Company effected such contral; (2) it denies that it is in any sense the "parent" company of the Lehigh & Wilkes-Barre Coal Company, or that it has controlled said coal company, or that it is united in the ownership and management of said coal company, in any other sense

than in so far as the ownership of a majority of the stock of said coal company constitutes the relation of "parent," or effects such control or ownership; (3) it denies that any alliance or community of interest exists between it and the navigation company which suppresses competition between the navigation company and any coal company in the stock of which it, the Central Company, has any interest, or that the agreements between it and the navigation company unreasonably restrict the freedom of the navigation company in selecting markets, or prevents or suppresses competition between it, the Central Company, and other carriers for the transportation of coal; (4) it denies that its transportation of coal mined or owned by the said coal company violates the commodities clause of the act to regulate commerce. It alleges on the contrary that the transportation of such coal has been held by final judgment of the Federal courts not to constitute such a violation.

It admits the allegations of that part of the petition numbered VIII, entitled "Control of the Lehigh and Hudson River
189 Railroad," &c., so far as the same relates to it, but it denies that the railroads of the Lehigh and Hudson River and the Lehigh and New England Companies ever constituted, or now constitute, two competitive and substantially parallel routes between the anthracite coal fields and points in New York and New England, or that the comparatively small stock interest held by the Central in the Lehigh and Hudson Company constitutes any common control or prevents competition between the Lehigh and Hudson and the Lehigh and New England, and constitutes any combination in restraint of interstate trade and commerce or any monopolization of a part thereof.

It admits that since January 20, 1874, it has owned a large majority, and now owns more than nine-tenths, of the capital stock of the Lehigh & Wilkes-Barre Coal Company.

III.

In respect of the allegations of the petition relating to the Lehigh and Wilkes-Barre Coal Company, it refers to the answer of this company which has been exhibited to it, hereby, on information and belief, admitting all that is therein admitted and not herein denied, denying all that is therein denied and not herein admitted, and alleging to be true all that is therein alleged to be true and not herein denied.

IV.

In respect of the allegations of the petition relating to the other defendants, except as herein admitted or denied, it has not sufficient knowledge or information to form a belief, and, therefore, asks that full proof thereof be made, if deemed material.

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V.

In respect of the allegations of the petition relating to it, other than those herein admitted or alleged to be true, it denies each and every one of the same, and it specifically denies:

1. That the transportation of anthracite by railroad at the rates now and for a long time past in force has been and is enormously profitable.

2. That the railroads and water lines operated since prior to 1901 by this defendant, and those operated by the Philadelphia & Reading Railway Company, respectively, have at any time constituted, or do now constitute, in any practical sense of the words, or in any sense that would make a joint ownership thereof obnoxious to existing law, potentially competitive routes of transportation between the anthracite fields of Pennsylvania and points on the waters of New York Harbor, including either Newark, Jersey City, New York City (Manhattan), or Brooklyn, or the ports of Long Island Sound or New England, including either New London, New Haven, Providence, Newport, Fall River, New Bedford, Boston, or Portland; or that with their respective connections they have at any time constituted, or do now constitute, in the sense of words above mentioned, potentially competitive routes of transportation between the anthracite fields and either Trenton, Philadelphia, Camden, Chester, Wilmington, Baltimore, Washington, or points along the Hudson River, or points between Albany and Boston on the New York Central lines, or points in central and northern New England on the lines of the Boston and Maine Railroad Company.

3. That either the railroads operated by the Lehigh and Hudson River Railway, with their connections, or those operated by the Lehigh and New England Railroad Company, with their

191 connections, constitute in the sense of the words stated in the foregoing paragraph, a route which is potentially competitive with either of the two routes referred to in said preceding paragraph.

4. That it has any interest, direct or otherwise, in the production or sale of anthracite, save as a transporter thereof; that any anthracite is manufactured, mined, or produced by it or under its authority; that it transports, in interstate or foreign commerce, any anthracite in violation of the commodities clause of the act to regulate commerce, as amended June 29th, 1906.

5. That it is a party, directly or indirectly, to any agreement, contract, combination, or conspiracy, by virtue of which it, either alone or in combination with the other defendants, or any of them, or otherwise, has acquired the power now or hereafter to control, regulate, restrain, or monopolize, or by virtue of which it, either alone or in such combination, has controlled, regulated, restrained, or monopolized either the production of anthracite or its transportation from the mines in Pennsylvania to market points in other States, or its price or sale in or throughout other States.

VI.

For a further and separate answer it alleges:

1. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defendants therein, for distinct matters and causes in some of which this defendant is not interested or concerned, and that the petition is, therefore, multifarious.

2. That it appears by the petition that this suit is brought against it and the other corporations and persons named as defend-
192 ants therein, for distinct matters and causes in some of which other defendants are not in any manner interested or concerned, and in respect thereof this suit can proceed against it to hearing and decree without the presence of said defendant, wherefore the petition is multifarious.

Wherefore, this defendant prays that the petition be dismissed as against it, with costs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
[SEAL.] By G. O. WATERMAN, *Secretary.*
JACKSON E. REYNOLDS,
ROBERT W. DE FOREST,
Solicitors for Defendant.

In the United States District Court for the Eastern District of Pennsylvania.

SEPTEMBER SESSIONS, 1913.

No. 1095. IN EQUITY.

UNITED STATES

v.

READING COMPANY, ET AL.

FINAL HEARING.

Before BUFFINGTON, HUNT, and MCPHERSON, Circuit Judges.

MCPHERSON, *J.:*

This action was begun in September, 1913, and is the successor of an earlier action brought in 1907, which was decided by this court in 1910 (183 Fed., 427), and by the Supreme Court in 1912 (226 U. S., 324). The suit of 1907 was brought against six of the railroads that reach the anthracite coal field of Pennsylvania, with certain coal companies and other defendants. It rested entirely on the antitrust act of 1890; the commodities clause of 1906 was not involved. The result of the suit was to declare two transactions unlawful—a combination through the Temple Iron Co. to prevent the construction of a railroad, and a class of contracts known as the "65 per cent contracts"—while the principal complaint of the Government, namely, that the carriers had combined to distribute the coal tonnage among themselves, was not sustained.

But as a part of the general combination charged to exist among the carriers the Government had averred that several minor combinations had been made, and upon the existence and the lawfulness of these the Supreme Court did not pass, declaring that if such combinations had been made they must be separately attacked, and therefore dismissing the bill as to them, but without prejudice to the Government's right to sue them in detail. The action now before us undertakes to prove the existence of one of these combinations, although the charges made in the suit of 1907 has now been expanded so as to embrace other transactions and other defendants than were embraced by that proceeding. The situation is complicated and may be difficult to state with clearness. It may perhaps simplify matters

if we premise some general statements before taking up the Government's case and the various answers thereto.

The present proceeding in equity declares its object to be (1) to prevent the defendants "from further restraining and monopolizing, or attempting to monopolize, interstate and foreign trade and commerce, especially in anthracite coal, in violation" of the antitrust act of 1890, and (2) to prevent some of the defendants "from transporting in interstate or foreign commerce anthracite coal (not intended for their use as common carriers) mined or produced by them, etc., in violation" of the commodities clause of the act of 1906.

Confining ourselves for the present to the alleged violation of the act of 1890, we note that the subject matter of the litigation is the interstate and foreign trade in anthracite coal. The coal in question is produced solely from the Pennsylvania deposit, which in the light of our present knowledge seems to be unique. The United States has never owned or controlled it; the present landowners derive their title either from the Penns, or from their successor, the Commonwealth of Pennsylvania. What kind of regulation the State might have put in force over this mineral asset if its value had been realized a century ago, and if the views now current in many quarters about the conservation of natural resources had then prevailed, is purely a matter of academic speculation. What actually happened was this: By gradual degrees anthracite coal came to be recognized as an excellent fuel, and thereupon the attention of private capital, always in search of profitable undertakings, was attracted thereto. The region was wild and unsettled, and the State desired to see it developed and was willing to offer inducements to that end. As a result, many persons acquired coal lands for small sums under the liberal land laws of Pennsylvania, and various mining and transporting enterprises were promoted, usually under the direct encouragement and authority of State legislation. Obeying an inevitable tendency, the ownership of these lands, in the course of years, passed into the hands of a comparatively small number of individuals and corporations, so that now, although there are still many smaller owners, the great bulk of the deposit belongs to a few large corporate producers. The agencies of production and transportation have been vastly improved and multiplied, and the use of the fuel has become so widespread that many industries and a very large number of homes are now greatly interested in the way the owners deal with their property.

The general situation from the point of view of the large coal-carrying and coal-producing companies was thus summarized by Judge Gray in the first *Reading case* (183 Fed., at p. 437):

"As appears from the undisputed testimony of the defendants, these present holdings of coal lands have resulted from acquisitions made through a long period of years by the companies named, respectively, or their predecessors in title, beginning, in the case of some of the largest holders and in respect to the larger part of the acquisition, long prior to 1874. The gradual growth of these acquisitions and the consequent development of the present situation, it is contended by the defendants, have been induced by natural causes, such as the geographical and topographical features of the anthracite coal region, which have presented serious obstacles to the construction of railroads with which it was sought to penetrate

the different coal fields of the anthracite region, and which have enhanced enormously the cost of their construction; that in the earlier periods of the development of this region, when the mines and the production of coal were more largely in the hands of individuals and small corporations, the business of mining and marketing coal was wasteful and often resulted largely in the failure or bankruptcy of those concerned therein. The individual exploiter skimmed the cream, so to speak, of his coal lands, and, unable to meet the expense of practicing the economies necessary to their full development, the mines were not infrequently abandoned, and of this abandonment deterioration or ruin was the natural result. That, latterly, the recurrence of strikes and labor troubles have contributed to the difficulties of the situation; that these strikes and labor troubles extended to all the coal-mining and coal-shipping operations of the whole region, affecting all producers, great and small alike, and that the solidarity of the labor unions compelled a joint agreement, embracing all engaged in mining operations as to the terms of settlement; that since the last settlement, in 1902–03, there has resulted a condition of comparative industrial peace in the anthracite region; that this condition, together with the increased demand for and the consequent increased price of coal, has regulated, without destroying, the *natural competition of the great carrying* and producing companies; that many economies in the production and sale of coal have been made possible, wasteful production largely done away with, and, more than all, a wise and scientific conservation of the future supply of this necessity of modern life has been brought about, to the infinite advantage of the public and of those connected with the production of coal, whether as capitalists or laborers.

"It is further urged by the defendants that the destruction of present conditions and methods attending the production and sale of coal will produce a deplorable anarchy in the trade, and involve in confusion and financial loss all those engaged therein, a confusion and loss by which the consumer is bound to suffer."

We think the contentions then made fairly state many of the facts, and in the present case we may say of them, as was said by Judge Gray, that while they are not decisive, they are pertinent, because their importance challenges the court's careful consideration of the question at issue. When we consider that some of the defendants ship coal to almost all the States and to three foreign countries, we obtain some conception of the magnitude of the trade and the need of caution in dealing with so vast a subject.

The Government is not making any attack on the title by which the defendants hold the lands they own in the Pennsylvania region, nor does it seek directly to divest or disturb their enjoyment thereof. The bill does not complain of the method (in and of itself) by which the title is held, and it does not complain of the methods of producing and distributing the coal, so far as these methods are confined to transportation and sale within the State. Neither is the Government complaining of the mere amount of the defendants' holdings, or of the mere extent of their business; the act of 1890 has not declared either such amount or such extent to be unlawful, in and of itself; the act is directed simply against unreasonable restraint of interstate and foreign trade, and neither the amount of the defendants' hold-

ings nor the extent of their business is relevant to the present inquiry except for the light that may be thrown thereby upon the effect of the defendants' conduct on interstate and foreign trade. In a word, we must keep steadily in view the only legitimate object of the proceeding, namely, to show by evidence that the trade referred to has been unreasonably restrained; and we think the investigation falls naturally into two principal divisions: (1) Whether production has been unreasonably restrained, and (2) whether a similar restraint appears in respect to the sale of the product.

With these preliminary remarks, let us turn to the bill and answers, summarizing them as much as possible, in order to see what questions are presented, and to obtain some idea of their relative importance. Approximations are used throughout and in the first instance we shall state the facts with special reference to the alleged violations of the act of 1890. There is little dispute over the facts; the controversy is over the proper inferences to be drawn therefrom.

The bill, or petition, charges as follows:

Subject of the Litigation.

As already stated, the subject is the interstate and foreign trade in anthracite coal from the Pennsylvania field. The larger sizes are extensively used for domestic purposes throughout the New England and Middle Atlantic States, and to a less extent in other sections of the country and in Canada. Small sizes are much used for steam purposes, mainly in the larger cities of the East. In recent years the average annual production has been 75,000,000 tons; in value it is third among the mineral products of the United States. Little anthracite is known to exist except in northeastern Pennsylvania, where the deposit is by far the largest and most valuable. It is found in several adjoining counties, and underlies an area (not always contiguous) of about 310,000 acres, or 484 square miles. At its nearest points, the field is 90 miles from Philadelphia, 140 miles from New York, 250 miles from Pittsburgh, and 265 miles from Lake Erie at the port of Buffalo. In some aspects there are four divisions of the field, but for trade purposes there are only three. From north to south, they are known as the Wyoming region, 176 square miles in area, the Lehigh region, 45 square miles, and the Schuylkill region, 263 square miles. Scranton and Wilkes-Barre are the principal cities in the first; Hazleton, in the second; Pottsville, in the third. Two varieties of anthracite are produced, white ash and red ash, these being further subdivided; the Wyoming and the Lehigh regions produce the white ash almost wholly, while the Schuylkill region produces both varieties.

In the earliest years of the industry the only transportation was by river or canal. But the railroad soon supplanted these agencies, and now carries nearly all the output of the mines to market. Ten railroads enter the field, namely:

(1) The Reading Railroad, which runs from the Schuylkill and the Lehigh regions to Philadelphia, and thence through New Jersey to Port Reading on New York Harbor.

(2) The Central Railroad, which runs from the Wyoming and the Lehigh regions through Pennsylvania and New Jersey to Port Johnston, Elizabethport, and Jersey City, all on New York Harbor.

(3) The New England Railroad, which runs from the Lehigh region to Campbell Hall, N. Y., connecting there with the systems of the New York Central, and of the New York, New Haven & Hartford.

(These three railroads are parties defendant; the remaining seven are not.)

(4) The Lehigh Valley Railroad which runs from all the regions to Perth Amboy and Jersey City, both on New York Harbor, and also to Lake Erie.

(5) The Pennsylvania Railroad, which also reaches all the regions.

(6) The Delaware, Lackawanna & Western Railroad, which runs from the Wyoming region to Hoboken on New York Harbor, and also to Buffalo.

(7) The Erie Railroad, which runs from the Wyoming region to Weehawken on New York Harbor, and also to Buffalo.

(8) The New York, Susquehanna & Western Railroad, which runs from the Wyoming region to Edgewater on New York Harbor.

(9) The New York, Ontario & Western Railroad, which runs from the Wyoming region to tidewater at Cornwall on the Hudson River and at Weehawken on New York Harbor, and also to Oswego on Lake Ontario.

(10) The Delaware & Hudson Railroad, which runs from the Wyoming region in a northerly direction.

It will thus be seen that 8 railroads reach the Wyoming region, 5 reach the Lehigh region, and 3 reach the Schuylkill. All of these 8 railroads have been operating in the field since 1870 at least; of the other two, one entered it directly in 1882 and directly in 1894, and the other entered in 1890.

Two lines of canals also are still in existence and do some business:

(1) The Schuylkill Canal, which follows the Schuylkill River from Port Clinton to Philadelphia, and is owned and operated by the Schuylkill Navigation Co.

(2) The Lehigh Canal and its continuations, the Delaware Division Canal, which follow the Lehigh and the Delaware Rivers from Coalport (or Mauch Chunk) to Easton and thence to Bristol. These canals are operated by one of the defendants, the Lehigh Navigation Co.

All the railroads mentioned except the New England and the Delaware & Hudson, reach New York Harbor, and that point receives about 25 per cent of the total tonnage shipped from the mines. The freight rate is substantially the same over each road. New York harbor is the largest market and point of distribution, all the coal terminals being on its western shore in New Jersey. Running from north to south, they are as follows;

At Edgewater, the terminal of the New York, Susquehanna & Western.

At Hoboken, of the Delaware, Lackawanna & Western.

At Weehawken, of the Erie, and also of the New York, Ontario & Western.

At Elizabethport and at Port Johnston, of the Central Railroad.

At Port Reading, of the Reading Railway.

At Perth Amboy, of the Lehigh Valley.

At South Amboy, of the Pennsylvania.

At these terminals the coal is screened, weighed, dumped into barges, and sold free on board. From the three upper terminals the

freight charge to a dock in New York is about 15 cents a ton. From the remaining and more distant terminals it is 5 cents more, but the selling price at the terminals is 5 cents a ton less, so that the price in New York City is the same whether the coal comes from one terminal or another. Some of the coal shipped to New York Harbor is not transferred to barges, but remains in the cars, these being towed on car floats to or toward points of destination.

After New York Harbor, Philadelphia is the most important market. It is served by the Reading Railway and by the Pennsylvania Railroad, and is a point from which a large quantity of coal is distributed by water, most of it going to New England.

Of the total production of anthracite about 12 per cent is consumed locally; of the remaining 88 per cent about one-fifth finds a market in Pennsylvania and four-fifths elsewhere.

Taking the latest figures that are available—for 1905—the shipments from the mines were distributed to the following points:

	Tons.	Per cent.
Pennsylvania	11,520,383	18.76
New York	18,125,419	29.52
New Jersey	7,212,341	11.74
New England States	8,692,504	14.15
Southern States	2,080,088	3.39
Western States	6,904,314	11.24
Pacific coast	1,743	.003
Canada	2,187,450	3.56
Other foreign countries	42,533	.07
Supply coal to railroads	4,643,426	7.56
Total	61,410,201	100.00

These proportions are probably still maintained, although the nanual production has been increased by 10,000,000 tons or more.

General Description of Defendants.

The Reading Co.—called herein the Holding Co.—is a Pennsylvania corporation created in 1871 with extensive powers that need not be enumerated. Its general office is in Philadelphia, and its present name was adopted in 1896. In November and December of that year its capital stock of $100,000 was increased to $140,000,000, divided into three classes, and all the stock has been issued. Its funded debt is $130,000,000.

The Philadelphia & Reading *Railway* Co.—called the Reading Railway—is the successor of the Philadelphia & Reading *Railroad* Co. It is a Pennsylvania corporation created in November 1896 with a capital stock of $20,000,000, afterwards increased to $42,500,000, and a funded debt that is now $50,000,000. Since December 1, 1896, it has been operating a system of railroads that extend southeasterly from the Schuylkill region of the coal field through Reading to Philadelphia, Port Richmond, and Wilmington, all on the Delaware River. From Philadelphia its line runs northeasterly through Boundbrook to Port Reading on New York Harbor. It is also operating barges and other vessels from Port Richmond to the principal ports of New England from Long Island Sound to Maine; and it operates similar vessels from Port Richmond to the general

neighborhood of New York. Since 1896 and 1900 it has connected at Philadelphia and at Wilmington with the Baltimore & Ohio Railroad, thus forming a through route from the anthracite field to Baltimore and Washington. Since 1896 it has connected at Newberry Junction, Pa., with the New York Central Railroad, thus forming a through route to points on the latter road between Lake Erie and the Hudson River, and between Albany and Boston. At Rotterdam Junction, N. Y., it connects with the Boston & Maine Railroad, which reaches points in central and northern New England. To the points thus reached by its own lines or by these connections it carries large quantities of general merchandise and of coal both bituminous and anthracite.

The Philadelphia & Reading Coal & Iron Co.—called the Coal & Iron Co.—is a Pennsylvania corporation created in 1871. Its present capital stock is $8,000,000 and its debt is more than $74,500,000. Both before and since 1901 it has owned or leased about 98,500 acres of coal-bearing lands in the Schuylkill region, containing many million tons of coal, and has shipped the coal taken from these lands and the coal bought from other producers to many eastern, southern, and western markets.

The Central Railroad Co. of New Jersey—called the Central Railroad—is a New Jersey corporation created in 1847. Its present capital stock is $27,500,000 and its funded debt $48,000,000. Since before 1901 it has operated as owner or lessee a railroad system that extends from the Wyoming and the Lehigh regions easterly across Pennsylvania and New Jersey (via Phillipsburg opposite Easton on the Delaware River) to Port Johnston, Elizabethport, and Jersey City—three points on New York Harbor—and extends also from Newark, N. J., southerly to Delaware Bay. It has extensive power to build and operate branches. Since before 1901 it has also been operating barges and other vessels from Port Johnston and Elizabethport to New York City and to ports on Long Island Sound and in New England; and it also operates car floats from Jersey City to New York City and to other points not far away. Before and since the same year its system has had the following connections:

(1) At Phillipsburg it connects with the Pennsylvania Railroad system, thus forming a through route from the anthracite field to Philadelphia, Wilmington, Baltimore, and Washington.

(2) At Easton it connects with the Lehigh & Hudson River Railway, this road in turn connecting at Maybrook, N. Y., with the system of the New York, New Haven & Hartford Railroad, thus forming a through route from the anthracite field to points in central and southern New England.

(3) Near Slatington, on the Lehigh River, and at Northampton and at Bethlehem Junction, it connects with the Lehigh & New England Railroad, this road in turn connecting at Campbell Hall, N. Y., with the system of the New York, New Haven & Hartford Railroad, thus forming another through route from the anthracite field to points in central and southern New England.

(4) At Sterling Junction and at Weehawken it connects with the West Shore division of the New York Central Railroad—the West Shore in turn connecting at West Albany with the Boston & Albany division of the New York Central, and connecting also at Rotterdam Junction with the Boston & Maine Railroad—thus forming through

routes from the anthracite field to points along the Hudson River and between Albany and Boston, and to Boston and Portland and other points in central and northern New England.

(5) At Sixtieth Street, New York City, via car floats from Jersey City, it connects with the main division of the New York Central, forming a through route from the anthracite field to points on that system along the Hudson and elsewhere.

Over these routes it has carried much traffic of all kinds, including anthracite in large quantities, to New York Harbor, Long Island Sound, and New England from Long Island Sound to Maine; and also to many other points reached either by its own lines or by the lines of the connecting carriers already named.

The Lehigh & Wilkes-Barre Coal Co.—called the Wilkes-Barre Coal Co.—is a Pennsylvania corporation created in 1874 by the merger of two other companies. Its present capital stock is more than $9,000,000, and its funded debt is nearly $17,000,000. Since prior to 1901 it has owned or leased nearly 16,000 acres of coal-bearing lands—13,500 acres being in the Wyoming region, and the rest in the Schuylkill region. These lands contain many million tons of anthracite. It has mined for many years, buying also from other producers, and has shipped and sold the coal chiefly but not wholly in the eastern markets from New York to Maine, reaching Philadelphia also and some points farther south.

The Lehigh Coal & Navigation Co.—called the Lehigh Navigation Co.—is a Pennsylvania corporation created in 1822, originally to hold lands and to build a canal and slack-water navigation along the Lehigh River. Afterwards it was authorized to build certain lines of railroad. Its capital stock is more than $26,000,000, and its funded debt is more than $21,000,000. It built and still owns and operates the Lehigh Canal, which runs for 46 miles along the Lehigh River from Coalport (or Mauch Chunk) to Easton; and it leases the Delaware Division Canal, which connects with the Lehigh Canal and runs for 60 miles along the Delaware River from Easton to tidewater at Bristol, 18 miles above Philadelphia. These two canals thus form a continuous line from the anthracite field to tidewater, and the Lehigh Navigation Co. has operated them for many years as a common carrier, anthracite being the principal freight. Its railroad is the Lehigh & Susquehanna Railroad, about 180 miles long with tributaries and branches, which runs from Phillipsburg northwesterly through Pennsylvania, touching the Schuylkill and the Lehigh regions and penetrating the Wyoming region as far as Wilkes-Barre and Scranton. It has long controlled, by ownership or otherwise, more than 13,000 acres of coal-bearing lands in the Lehigh region, containing many million tons, the annual production being nearly 4,000,000 tons. Its coal is shipped mainly to eastern markets, including New York City and its neighborhood, points in New England from Long Island Sound to Maine, and points from Philadelphia to Washington. It formerly owned also more than 5,000 acres of coal-bearing lands in the Wyoming region, these being acquired after the construction of the Lehigh & Susquehanna Railroad. It owns and operates (until recently) a gathering line, the Panther Creek Railroad, which collects the product of its mines and connects at Hauto with the lines of the Central Railroad, and connects also at Tamaqua

with the lines of the Reading Railway and of the Lehigh & New England Railroad. Almost all the Navigation Co.'s coal reaches market by these two connections at Hauto and at Tamaqua.

The Wilmington & Northern Railroad Co. is a Pennsylvania-Delaware corporation, created in 1877. Its present capital stock is $1,500,000, and its funded debt is $894,000. Its railroad, 72 miles long, runs from Wilmington through Coatesville to a point near Reading, reaching that city over the rails of the Reading Railway. At Reading it connects with the Pennsylvania Railroad and the Reading Railway, thus forming two through routes from the anthracite field to tidewater at Wilmington. Until February 1, 1900, it operated the line from Reading to Wilmington, carrying anthracite as its principal freight.

The Lehigh & Hudson River Railway Co.—called the Hudson River Railway—is a New York-New Jersey corporation, created in 1882. Its present capital stock is $1,340,000, and its funded debt is $3,230,000. Since before 1901 it has operated a railroad from Easton to Maybrook, N. Y. At Easton it connects with the Central Railroad, the Lehigh Valley Railroad, and the Delaware, Lackawanna & Western Railroad (the last two companies not being parties to this action). From Easton it runs through Belvidere (where it makes another connection with the Lackawanna road) to Maybrook, where it connects with the system of the New York, New Haven & Hartford, thus forming a through route from the anthracite field to points in central and southern New England. It also reaches Campbell Hall, N. Y., where it connects with the New York Central system, thus forming a through route from the coal field to points on that system. About 20 per cent of its tonnage is anthracite.

The Lehigh & New England Railroad Co., called the New England Railroad, is a Pennsylvania-New Jersey corporation. Its present capital stock is $1,000,000, and its funded debt is $8,000,000. Its road runs from several points in Pennsylvania to Campbell Hall. In Pennsylvania it connects at Tamaqua, in the Schuylkill region, with the Reading Railway and with the Panther Creek Railroad of the Lehigh Navigation Co.; at Slatington, with the Lehigh Valley Railroad; and at a point opposite Slatington, and also at Northampton and at Bethlehem Junction, with the Central Railroad. At Campbell Hall it connects with the systems of the New York Central and of the New York, New Haven & Hartford, thus forming a through route to points in New York and in central and southern New England. About 16 per cent of its tonnage is anthracite.

The individual defendants have been made parties to the bill in their character as officers or directors of some of the corporations defendant.

Charges Against Defendants.

The charges against the defendants must be much condensed. The transactions attacked are divided into three classes, the first comprising acts and agreements before 1896, the second those from 1896 to 1901, and the third those from 1901 onward. This is the general division, although occasional overlapping may take place.

BEFORE 1896.

1. TRANSACTIONS OF THE READING *RAILROAD* WITH THE COAL & IRON CO.

The Reading *Railway* was not chartered until the latter part of 1896. Before that time its main line and branches (with some exceptions) were operated by the old Reading *Railroad*, a Pennsylvania corporation created in 1833. About 1871 the Railroad Co. undertook to control in some measure the production of anthracite along its lines. It announced the policy in that year, stating its reasons to be the serious interruption of its business by strikes and the alternate periods of expansion and depression in the trade; and stating also that the policy could probably be best carried out without injuring individual interests if the Railroad became the owner of coal lands along its branches. Accordingly it had already bought 70,000 acres, and had borrowed and spent for this purpose $12,000,000.

But the Railroad's character restricted it to the business of a common carrier, and therefore the Coal & Iron Co., incorporated in the same year, took over the lands already purchased. The whole capital stock of the Coal & Iron Co. was owned by the Railroad. Within a short time the Coal & Iron Co. began to mine and sell coal, shipping to market over the Railroad. Assuming the original motive to be as stated, the Government contends that the Railroad soon expanded its policy, intending to control not merely enough lands to secure a fair share of tonnage, but enough to control production in the Schuylkill region and to monopolize transportation therefrom. In support of this contention, the bill cites the report of an investigating committee appointed in 1885 by the Railroad's stockholders, in which the original policy is declared to have grown into a policy to prevent competition and to secure control; in evidence whereof the committee refers to the acquisition of 20,000 additional acres in 1874. Citation is also made from the Railroad's report for 1881, which states the object of the policy to be the control of the entire production in that region, as well as the control of iron production in the Schuylkill Valley.

Pursuing this policy (the bill goes on), the railroad furnished money and credit in large amounts to the Coal & Iron Co., wherewith the latter acquired shipping and marketing facilities, additional coal lands, and the shares of other coal-owning and coal-mining companies. But this policy of buying a large acreage was costly and injudicious; much of the land remained undeveloped and unproductive, and serious loss often resulted, the aggregate thereof being several million dollars, which was paid by the Railroad directly or indirectly. By September, 1896, the Railroad had advanced more than $65,000,000, none of which had been repaid. Moreover, the Railroad had guaranteed $12,000,000 of the Coal & Iron Co.'s bonds, on which it often paid $1,000,000 a year for interest and sinking-fund charges. The Railroad received no interest on any of its advances. Further, the Railroad remitted several million dollars of freight charges against the Coal & Iron Co.

By these financial favors, namely, the advance of money and credit without interest, the payment of losses and of interest on the Coal & Iron Co.'s bonds, and the remission of freight charges, the Railroad unlawfully discriminated against other producers and shippers, and thus was able to advance toward complete control.

The extent of its progress in that direction is indicated by the following facts: By September, 1896, the Coal & Iron Co. had acquired about 169,000 acres of land in the Schuylkill region, more than 98,000 containing coal, and also controlled the capital stock of six other corporations that owned more than 11,000 acres in the same region, 9,000 containing coal. These lands, it is said, contain more than half the coal in the Schuylkill region, and nearly half the whole deposit. On these lands there were 65 collieries, most of which were operated by the Coal & Iron Co., the production in 1896 being more than 7,000,000 tons. As the Coal & Iron Co. also bought coal at the mines from other producers, its total shipments in 1896 over the Railroad were more than 8,000,000 tons. This was about 80 per cent of all the anthracite carried by the Railroad.

These transactions by the two companies are attacked as outside the normal course of business development, and as having both the object and the effect of giving the Railroad control of production in the Schuylkill region and control of carriage and of sale to and in markets beyond the State. Therefore the Railroad's control of the Coal & Iron Co. by stock ownership is charged to have been an unlawful combination and monopoly.

But the Government expressly declares that it does not attack the Coal & Iron Co., in and of itself, as an unlawful combination or monopoly.

2. LEASING OF THE SCHUYLKILL AND THE SUSQUEHANNA CANALS BY THE READING RAILROAD.

The Schuylkill Navigation Co. (not a defendant) owns a canal and slack-water navigation along the Schuylkill River from Port Carbon to Philadelphia, and since before 1870 this canal has been a water route from the coal field to tidewater. In 1869 it carried more than 1,000,000 tons of freight, most of it anthracite; and it was then, and for many years had been, competing actively with the old Reading Railroad in the carriage of coal from the mines to Philadelphia and to intermediate points. In July, 1870, in order to suppress such competition and to monopolize the carriage of anthracite from the Schuylkill region, the railroad leased the canal for 999 years at an annual rental of $655,000. Afterwards, it acquired nearly all the Navigation Co.'s capital stock and debt, $4,000,000, and $8,500,000, respectively. Being thus in control, it diverted traffic from the canal to its own road, so that in 1880 the canal's tonnage was less than 700,000 tons; in 1890 it was less than 150,000 tons; and since that year it has diminished still further. In 1888, the rental was reduced to a nominal sum; before that time the Railroad's loss in operating the canal had been $150,000 a year, this being the price of suppressing competition. The Railroad's lease and other interest continued until September, 1896, when all its property was sold at receivers' sale. The Railroad's control of the Schuylkill Canal is charged to have restrained and monopolized trade unlawfully because the canal's competition was thus suppressed.

We need not refer to the Susquehanna Canal, which runs from Columbia, Pa., to Chesapeake Bay, because the Government seems to lay no weight on the subject.

3. TEMPORARY LEASING OF THE LEHIGH VALLEY AND THE CENTRAL RAILROADS BY THE READING RAILROAD.

The bill goes on to charge that the old Reading Railroad, being thus dominant in producing and transporting coal from the Schuylkill region, undertook to enter the Lehigh and Wyoming regions also. Accordingly, in 1892 it leased for 999 years the lines of the Lehigh Valley Railroad Co., which entered all the regions and extended to New York Harbor and westwardly to Buffalo. It did not act directly in leasing the Central Railroad, but used the agency of the Port Reading Railroad Co., whose entire capital stock it owned. Accordingly, the Port Reading Co. leased for 999 years the lines of the Central Railroad, which entered the Wyoming region and touched the Lehigh and the Schuylkill regions, and had three New York terminals. At the same time the Coal & Iron Co.—whose stock also was owned entirely by the Reading Railroad—contracted to purchase at the mines the whole output of the Lehigh Valley Coal Co., a large owner and producer in all three regions, whose capital stock was owned by the Lehigh Valley Railroad Co. And the Coal & Iron Co. made a similar contract with the Wilkes-Barre Coal Co., a large owner and producer in the Wyoming region, whose capital stock was nearly all owned by the Central Railroad. By these arrangements it is charged that the Reading Railroad would have controlled about 75 per cent of the total deposit of anthracite and the transportation of about 50 per cent of the annual output.

Except in their bearing upon the question of the old Reading Railroad's purpose and object, these leases and contracts are no longer important; the agreements with the Central Railroad and with the Wilkes-Barre Coal Co. were set aside by the New Jersey Court of Chancery, and the Lehigh Valley contracts were thereupon rescinded.

CHARGES IN 1896.

In 1893 the old Reading Railroad and the Coal & Iron Co. went for the third time into the hands of receivers, and on September 23, 1896, all the properties of both companies were sold at judicial sale in accordance with a plan of reorganization of which J. P. Morgan & Co. were the managers. In November, the Reading *Railway* was organized and took title to the railroad properties (except the equipment) formerly belonging to the old Reading *Railroad*, paying for the same by delivering certificates of stock representing its whole capital of $20,000,000, and by executing a purchase money bond and mortgage, also for $20,000,000. The Railway took possession on December 1, and since then has continuously operated these roads.

In November, the purchasers at the sale reconveyed to the Coal & Iron Co. its former property, including lands, mines, and shares of other companies. In consideration whereof it joined the Holding Co. as coobligor in a general mortgage for $135,000,000. On December 1 it took possession of the reconveyed property and has since been engaged in mining, selling, and shipping coal.

Among the securities acquired from the old Reading *Railroad* at the receivers' sale was the whole capital stock of the Reading Co., a Pennsylvania corporation that had been created under another name in 1871, with power *inter alia* to buy and sell the shares and bonds of

other corporations. This company had maintained its corporate existence, but had done little active business. But, as it antedated the Pennsylvania Constitution of 1874—which forbade a common carrier to mine coal for transportation over its line—it was believed to be a suitable agency to effect the practical and substantial combination of the Coal & Iron Co. and the Reading Railway in spite of the constitutional provision. Accordingly its capital stock was increased to $140,000,000 and its name was changed to the Reading Co.—called the Holding Co. in this opinion.

On December 23, the Holding Co. took title to the whole capital stock of the Railway Co. and of the Coal & Iron Co.—$20,000,000 and $8,000,000, respectively—to the purchase money mortgage debt of the Railway Co., $20,000,000 in a single bond; and to all other property sold at the judicial sale that had not already been conveyed to the Reading Railway, or to the Coal & Iron Co. The Holding Co. thus acquired the equipment (railroad and marine) of the old Reading Railroad; the claim of that railroad against the Coal & Iron Co. for advances and freight, amounting to more than $68,000,000; and the capital stock and debt of the Schuylkill Navigation Co. In consideration of this transfer, the Holding Co. delivered certificates for its $140,000,000 of capital stock (except $50,000 thereof), and on January 5, 1897, gave a general mortgage, with the Coal & Iron Co. as joint obligor, which covered substantially all the property of both companies, to secure $135,000,000 of bonds. Of these about $50,000,000 were presently delivered, and the remainder was reserved. The stock and bonds thus delivered by the Holding Co. were thereupon distributed among the persons entitled thereto under the plan of reorganization. Thus the Holding Co. became the owner of all the equipment formerly owned and used by the old Reading Railroad.

The same person became president of the Holding Co. of the Reading Railway and of the Coal & Iron Co., and the same person became treasurer of each. The directors of the Holding Co. furnished a majority in the boards of the Reading Railway and of the Coal & Iron Co., and as a rule the majority in each of these two boards was composed of the same individuals.

Of the bonds secured by the general mortgage of $135,000,000—which binds both the Holding Co. and the Coal & Iron Co.—nearly $51,000,000 were reserved (and are being used) to take care of bonds of the old *railroad* that are secured by mortgage on property now owned by the Reading *Railway;* $14,000,000 were reserved to take care of bonds of the Coal & Iron Co.; and $20,000,000 were reserved and have been used for the benefit of the Reading Railway's roads.

The general mortgage referred to makes both obligors liable for the interest on the outstanding bonds of the old railroad and on the similar bonds of the Coal & Iron Co. The Reading Railway can not raise capital for new construction or improvements by a public sale of the bonds that were reserved for that purpose by a certain prior mortgage dated November 18, 1896, but is obliged to deliver such bonds to the Holding Co. with an equal amount of its capital stock. Thereupon the Holding Co. is to deposit the securities under the general mortgage of January 5, 1897, and issue an equal amount of its own bonds, paying over the proceeds of these to the Railway.

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on the broad question of policy as affecting all cases might be very disastrous.

You had better have a talk with Mr. Heilner, and see whether the opening up of this territory to Schuylkill coal will be limited to the smaller sizes which we can not supply. Of course, you understand that we can not simply put in a rate on the smaller sizes. If we put in a rate at all we must cover all sizes of coal, and Heilner will be able
346 to judge how this condition will affect the restricted markets of the L. & W. B.

Yours, truly,

GEO. F. BAER, *President.*

From Heilner to T. B. Koons, dated December 7, 1908, marked **"Exhibit 42,"** as follows:

Under date of Dec. 7, 1908, Heilner, of the L. & W. B. Coal Co., wrote to Koons, as follows:

"Returning herewith President Baer's letter of the 2d inst., addressed to you, we can only say that we endorse most emphatically the objections which he raised to the proposed tariff in connection with the Reading. It would be most disastrous to all the shippers on the Central Railroad, and as this company is the largest shipper, of course it would affect us more than all the rest of them together.

"Your idea that you could put a rate of $1.85 to Jersey City on prepared coal, and thus keep out these sizes, is a mistake. When times are dull, and that is just when we want all the business we can get, it would be a perfect delight for the individual operators and some of the companies on the Reading to absorb this 25 cents a ton or more to get the business.

"I saw Gen. Wheeler, of the Standard, this morning, and he gave us a sample order for the acid plant. As I understand it, he has bought his coal for the Bay Way plant, and can get it under the
347 Reading and B. & O. tariff. This leaves only the acid works, which uses about 20,000 tons a year, and which we can supply. Now do you propose, for this small tonnage, to open up to the Reading and its shippers the line of the Central Railroad Co. of New Jersey. * * *."

From Besler to Koons, dated January 25, 1909, marked **"Exhibit 43,"** as follows:

(Koons' file No. 13769.)

Besler wrote to Koons on Jan. 25, 1909, as follows:

"I understand the L. V. have a contract for supplying anthracite coal for the Standard Oil Co. at Constable Hook, some sizes of which the L. V. are unable to furnish, and that they are securing the coal from the P. & R.—this, notwithstanding the fact that it was our understanding that P. & R. anthracite coal could not come over into C. R. R. territory without disturbing L. & W. B. arrangements, etc. * * *."

From W. C. Johnson to J. A. Taylor, dated October 7, 1906, marked **"Exhibit 44,"** as follows:

(W. B. Besler's file 8808. Copy of original. Lehigh & Wilkes-Barre Coal Co., accounting department, Reading Terminal. W. C. Johnson, general auditor.)

PHILADELPHIA, PA., *Oct. 7, 1906.*

Mr. J. A. TAYLOR,
General Auditor, C. R. R. of N. J.,
Reading Terminal, Philadelphia.

DEAR SIR: Regarding the coal shipped by the Coleraine Colliery 348
to the N. J. Zinc Co., Hazards, on our account. This coal is to apply on the contract with the Zinc Co., and is costing us 66 cts. per ton, made up as follows: Coal, 30 cts.; tolls, 36 cts. The price which we receive from the Zinc Co. is 55 cts. per ton, made up as follows: Coal, 24½ cts.; tolls, 30½ cts. This shows a loss to us of 11 cts. per ton. During the month of September we received 1,605.09, which, at 11 cts. per ton, amounts to $176.60. Our Mr. Heilner informs me that the Central would assume this loss, reimbursing us for same by adding to the supply coal bids. The latter, I believe, was President Baer's suggestion. Will you kindly take this matter up and advise how you wish to dispose of it?

Yours, truly,

W. C. JOHNSON, *General Auditor.*

Counsel for Government offered in evidence lease dated June 15, 349
1910, between the Central Railroad Company of New Jersey and Burns Brothers (marked "Exhibit No. 45"). The lease is as follows:

This indenture of lease, made the fifteenth day of June, in the year one thousand nine hundred and ten, by and between the Central Railroad Company of New Jersey, a corporation of the State of New Jersey, party of the first part, hereinafter called the "Lessor," and Burns Bros., also a corporation of said State, party of the second part, hereinafter called the "Lessee," witnesseth:

That the Lessor, for and in consideration of the rents, covenants, agreements, terms, and conditions hereinafter mentioned and contained and by the Lessee to be paid, performed, kept, done, and observed, has leased, demised, and to farm let, and, by these presents, does lease, demise, and to farm let unto the Lessee, for the term of ten (10) years from and next ensuing after the first day of July, one thousand nine hundred and ten,

Those certain pieces or parcels of land and the pier situate, lying and being in the city of Jersey City, in the county of Hudson and State of New Jersey, and described as follows, to wit:

Parcel No. I.

That certain portion of plot B, block 2040, on the tax maps of the 350
said city of Jersey City as more clearly shown outlined in yellow on blue print marked "Plan No. (1)" hereto attached and hereby made a part hereof, together with the use of the trestle beneath the main track of the Lafayette Railroad adjoining the above-mentioned portion of said plot B.

Parcel No. II.

All that certain plot known and designated as plot A, block 60, on said tax map of said city of Jersey City, together with the two coal trestles and sidings erected thereon, as more clearly shown on blue

print marked "Plan No. (2)" hereto attached and hereby made a part hereof.

Parcel No. III.

All those two certain plots designated on said tax maps of said city of Jersey City as plots 46B and 46C, together with the two coal trestles erected on plot formerly known as 46G and now included in plot 49 in block 2145, as more clearly shown on blue print marked "Plan No. (3)" hereto attached and hereby made a part hereof; also the blacksmith shop eastwardly of and opposite plot 46C and the storage space, yard, and driveways around and adjacent to the trestles and stables; all as heretofore used and occupied by the Lessee.

Parcel No. IV.

All that certain portion of plot formerly known and designated on said tax maps of said city of Jersey City as plot 48F, now included in plot 51, block 2145, covered by Pier No. 8, and including said
351 pier and the structures erected thereon, as more clearly shown on blue print marked "Plan No. (4)" hereto attached and hereby made a part hereof.

To have and to hold the said above described pieces or parcels of land and the said pier unto the lessee, its successors and assigns, for the purposes of the receipt and delivery of coal and coke, the conduct of its coal and coke business and purposes connected and allied therewith for the said term of ten (10) years from and next ensuing after the first day of July, one thousand nine hundred and ten.

For and in consideration of the letting of said above described pieces or parcels of land and the said pier (hereinafter together referred to as the "demised premises") and as rental therefor, the Lessee, for itself and its successors and assigns, hereby covenants and agrees to and with the Lessor as follows, to wit:

I. To pay or cause to be paid to the lessor at the office of its treasurer at number 143 Liberty Street, in the city of New York, State of New York, yearly and every year during the continuance of this lease the annual sum of thirty thousand dollars ($30,000.00) in four equal quarter-yearly installments of seven thousand five hundred dollars ($7,500.00) each in advance, the first of said quarter-yearly installments to be paid at the time of the beginning of the term hereof and so every quarter-year thereafter.

II. To purchase all anthracite coal handled at and on said Demised
352 Premises from points north or west from Mauch Chunk, Carbon County, Pennsylvania, to cause all coal so there purchased to be transported thence over the lines of railroad owned, controlled, or operated by the Lessor, and to purchase all bituminous coal or coke handled at and on said Demised Premises from points in the bituminous coal-producing regions tributary to lines having joint rates and forming through routes with the lessor and its railroad, to the end that the lessor shall obtain the greatest possible haul over its line, and to the extent of the said lessee's power and control, direct the shipments of said bituminous coal and coke by way of Hauck's Switch, Allentown, or Buttonwood, Pennsylvania, or Bound Brook, New Jersey, and thence over the lines owned, controlled, or operated by the Lessor, and to so annually purchase and cause to be transported to, and handled

at, the said demised premises each and every year during the continuance of this lease not less than five hundred thousand (500,000) gross tons of coal and coke, giving preference on equal terms to coal of the Lehigh & Wilkes-Barre Coal Company; it being understood and agreed that the said annual tonnage shall be computed from the first day of July to and including the next ensuing thirtieth day of June in each and every year during the continuance hereof. This agreement to purchase said amount of coal is further conditioned upon its being purchasable at average market prices ruling from time to time at shipping ports in New York Harbor.

And in further consideration of the said letting of said demised 353
premises the lessee further covenants and agrees to and with the lessor as follows, to wit:

(*a*) That the said demised premises shall be used by the lessee solely and exclusively for the receipt and delivery of coal and coke so as aforesaid purchased and transported and the conduct of its coal and coke business and purposes connected and allied therewith.

(*b*) That it, said lessee, will not at any time hereafter, directly or indirectly, assign this lease nor sublet the demised premises or any part or parcel thereof to any person or persons, firm or firms or corporation or corporations whomsoever, or in any way charge or encumber the same, without the prior consent in writing thereto of the lessor.

(*c*) That it, said lessee, will at its own sole cost and expense keep and maintain during the continuance of this lease the water approaches to said parcel No. IV dredged to such depth as may be reasonably necessary for the proper and unimpeded conduct of its business thereat.

(*d*) That upon the termination of the said term of ten (10) years or upon the earlier termination of this lease under its provisions it, said lessee, will peaceably surrender and yield up the demised premises and every part and parcel thereof with all structures and improvements thereon, unto the lessor, its successors or assigns.

And it is further understood and covenanted and agreed by and 354
between the parties hereto as follows, to wit:

First. In the event that the Lessor, at any time or times during the continuance of this lease, shall desire to rearrange its yards, tracks, or terminal facilities upon or in the vicinity of said demised premises, or any part or parcel thereof, and for that purpose to reenter upon and occupy the same, it shall have, and it hereby reserves unto itself, its successors and assigns, the right so to do upon twelve months' prior written notice to the Lessee, its successors or assigns, which notice shall specify the demised premises or part or parcel thereof which it desires to so reenter upon and occupy, and the Lessee hereby covenants and agrees to vacate and surrender unto the Lessor possession of the premises described in such notice at the date therein fixed for that purpose, which shall not be earlier than said twelve (12) months next following the service of such notice upon it. In the event of such premises being so as aforesaid required and occupied by the Lessor, and that it is reasonably possible to furnish and provide other portions of its terminal property at said city of Jersey City of area, conveniences, equipment, and facilities substantially equal to the premises vacated, it shall so furnish and provide the same in lieu of the said vacated premises, and the provisions of this lease shall thereupon apply to the

355 premises so furnished and provided to the same extent as to those so vacated and surrendered up.

In case the Lessor can not so furnish and provide such other portions of its terminal property in lieu of those vacated and surrendered as above provided, the Lessee may thereupon, at its option, terminate this lease, unless (1) the rentals (2) the minimum tonnages agreed by it to be paid and handled as above set out shall be satisfactorily mutually adjusted as to the remaining parts and parcels of said demised premises.

Second. If the Lessee shall fail to purchase, cause to be transported, and handled in any year during the continuance hereof the minimum number of tons of coal and coke at said demised premises as hereinabove provided (unless such minimum tonnage shall have been reduced by strikes or other like contingencies beyond its control), the Lessor shall have the right, at its option, to terminate this lease at the expiration of any year in which such failure shall occur upon first giving to the Lessee six (6) months' notice of its intention to so terminate the same, at the expiration of which said period of six (6) months, following the giving of such notice, this lease shall cease and terminate; provided, however, that in case the Lessee shall be prevented by strikes or other like contingencies beyond its control or by any fault of the Lessor from carrying out the provisions as to said annual minimum tonnage there shall be a proportionate abatement
356 in the said tonnage for that year and provided further that if during said period of six (6) months next ensuing after giving such notice the Lessee shall so purchase, cause to be transported, and handle a sufficient amount of coal and coke, in addition to the proportionate tonnage for the then current year, at said demised premises to make up the deficit in the tonnage of the preceding year, then this lease shall continue notwithstanding such notice, which said notice shall thereupon become ineffective.

Third. In case of failure of the Lessee to pay any installments of rental above reserved at the time when due and payable and in the manner as hereinabove provided, such failure continuing for thirty (30) days thereafter, or in case of breach by said Lessee, other than as above provided, of any of the covenants, conditions, and agreements herein contained and by it to be fulfilled, kept, and performed, such breach continuing uncompensated for thirty (30) days thereafter, then and in any such event the Lessor may, at its option, terminate this lease upon giving to the Lessee thirty (30) days' notice of its intention so to do, upon the expiration of which said period of thirty (30) days next following the giving such notice this lease shall cease and terminate.

Fourth. The Lessor will pay all taxes that may be levied upon the demised premises or any part thereof and will at its own expense maintain and keep in good, serviceable, and safe repair all structures and facilities upon the said demised premises.

357 Fifth. The Lessee now being in possession of the demised premises and all parts and parcels thereof under various leases thereof to, or agreements with, it or to or with others, to all whose interests and rights therein and thereunder it claims and represents to have succeeded, it is further understood and agreed that this lease shall supersede and take the place of all such other leases and agreements, written or verbal, relative to, or affecting, said demised premises and

all parts and parcels thereof from and after the date of the inception of the term herein and hereby created, to wit, from and after the first day of July, 1910, from and after which said last-named date all such other leases and agreements shall cease and be of no effect, and shall terminate on said last-named date, following and after which the possession by the Lessee of said demised premises and all parts and parcels thereof shall be solely under this lease and subject to the provisions hereof, such termination of said other leases and agreements, however, not affecting any claims of either party against the other then existing under the same.

Sixth. It is mutually covenanted and agreed that the Lessor, as a part of its transportation duty, will, during the continuance of this demise, deliver all coal and coke (so consigned) by placing the loaded cars upon the trestles or pier situate upon the demised premises and 358
remove the empty cars therefrom without charge.

Seventh. The Lessee will, at its own sole cost and expense, furnish all the labor and other services required to unload and ship the coal, but at the pier on parcel IV the Lessor agrees to pay to the Lessee for such labor and services the sum of twelve (12) cents per ton on all bituminous coal and steam sizes of anthracite coal and the sum of fifteen (15) cents per ton on all prepared sizes of anthracite coal.

Eighth. The word "ton" as used in this agreement shall be deemed to be a gross ton of 2,240 pounds and the word "coal" to include both bituminous and anthracite coal.

In witness whereof the parties hereto have caused these presents to be duly and properly executed in their respective corporate names and under their respective corporate seals by their executive officers thereunto duly authorized the day and year first aforesaid.

THE CENTRAL RAILROAD COMPANY
OF NEW JERSEY,
By (Sgd.) W. G. BESLER, *Vice President.*

Attest:
(Sgd.) G. O. WATERMAN, [SEAL.]
Secretary.

BURNS BROS.,
By (Sgd.) M. F. BURNS, *President.*

Attest:
(Sgd.) W. R. BELKNAP, *Secretary.*

Counsel for Government called on counsel for the Reading Com- 359
panies to produce letter from George F. Baer to James McCrea, dated May 21, 1907.

Government's counsel offered in evidence extract from memorandum in the Lehigh and New England Railroad Company's records, marked "**Exhibit No. 46,**" as follows:

[L. & N. R. R. President's file E-1710-54-1.]

OCTOBER 4, 1910.

(1) Estimate of increase on western coal now moving via Philadelphia & Reading on which we do not receive any allowance account of the freight rate—17,000 tons at 25 cts. per ton—$4,375.00. Prob-

ably no increase in service over what we now perform in delivering coal to P. & R. at Tamaqua.

(2) By having our own railroad connection with the mines, we can have rates put in to practically all points and enable us to place our coal on the market on the same basis as other coal companies, who accept very small profits on the coal as their railroads make the profit out of the freight rates.

(3) * * *

Counsel for Government read in evidence extracts from pamphlet entitled **"The Production of Coal in 1912,"** issued by the United States Geological Survey.

It is understood that the defendants may read into the evidence extracts from the same volume, if they so desire.

From page 23, as follows:

The areas in which anthracite is produced are confined almost exclusively to the eastern part of Pennsylvania and usually when the
360 anthracite fields of the United States are referred to those of eastern Pennsylvania are meant. These fields are included in the counties of Susquehanna, Lackawanna, Luzerne, Carbon, Schuylkill, Columbia, Northumberland, Dauphin, and Sullivan, and underlie an area of about 480 square miles. In addition to these well-known anthracite fields of Pennsylvania there are two small areas in the Rocky Mountain region where the coal has been locally anthracited, although the production from these districts has never amounted to as much as 100,000 tons in any one year.

From page 22, as follows:

Production of coal in the United States from 1870 to the close of 1912, in short tons.

PENNSYLVANIA ANTHRACITE.

1870	15,664,275	1892	52,472,504
1871	19,342,057	1893	53,967,543
1872	24,233,166	1894	51,921,121
1873	26,152,837	1895	57,999,337
1874	24,818,790	1896	54,346,081
1875	22,485,766	1897	52,611,680
1876	22,793,245	1898	53,382,644
1877	25,660,316	1899	60,418,005
1878	21,689,682	1900	57,367,915
1879	30,207,793	1901	67,471,667
1880	28,649,812	1902	41,373,595
1881	31,920,018	1903	74,607,068
1882	35,121,256	1904	73,156,709
361 1883	38,456,845	1905	77,659,850
1884	37,156,847	1906	71,282,411
1885	38,335,974	1907	85,604,312
1886	39,035,446	1908	83,268,754
1887	42,088,197	1909	81,070,359
362 1888	46,619,564	1910	84,485,236
1889	45,546,970	1911	90,464,067
1890	46,468,641	1912	84,361,508
1891	50,665,431		

From page 166, as follows:

Anthracite.—Total production in 1912, 75,322,855 long tons (equivalent to 84,361,598 short tons); spot value, $177,622,626.

Counsel for Government read in evidence extracts from House Document No. 1442, Sixty-second Congress, third session, entitled: "**Increase in Prices of Anthracite Coal following the Wage Agreement of May 20, 1912, Prepared under the Direction of the Commissioner of Labor,**" as follows:

From page 55, as follows:

The shipments to tidewater in 1910 and 1911 (the only years for which data are available) constituted, respectively, 24.4 and 25 per cent of the total shipments from the anthracite region for those years.

From page 89, as follows:

Total annual shipments of anthracite coal, 1890–1911.

[From bulletin of United States Geological Survey, The Production of Coal in 1910, p. 190. Tons of 2,240 pounds are used.]

1890	36,615,459	1901	53,568,601
1891	40,448,336	1902	31,200,890
1892	41,893,340	1903	59,362,831
1893	43,089,537	1904	57,492,522
1894	41,391,200	1905	61,410,201 363
1895	46,511,477	1906	55,698,595
1896	43,177,485	1907	67,109,393
1897	41,637,864	1908	64,665,014
1898	41,899,751	1909	61,969,885
1899	47,665,204	1910	64,905,786
1900	45,107,484	1911	69,954,299

Counsel for Government read in evidence from pamphlet entitled "**The Production of Coal in 1912,**" extract from page 180, as follows:

Monthly shipments of anthracite, 1908–1912, in long tons.

Month.	1908	1909	1910	1911	1912
January	5,618,339	5,183,345	5,306,618	5,904,117	5,763,606
February	4,503,756	4,576,004	5,031,784	5,070,948	5,875,968
March	4,766,158	6,332,474	5,174,166	5,996,894	6,569,687
April	5,987,221	5,891,176	6,224,396	5,804,915	266,625
May	6,088,116	5,063,873	5,679,661	6,317,352	1,429,357 364
June	5,704,852	4,904,858	5,398,123	6,215,357	6,191,646
July	4,541,506	4,020,765	4,202,059	4,804,065	6,285,153
August	4,599,093	4,198,273	4,996,044	5,531,796	6,576,591
September	5,211,047	4,116,120	4,967,516	5,730,935	5,876,496
October	5,977,497	5,579,759	5,622,095	6,269,179	6,665,321
November	5,839,491	6,027,800	6,071,746	6,193,314	6,165,536
December	5,827,938	5,775,438	6,231,578	6,115,427	5,944,502
Total	64,665,014	61,969,885	64,905,786	69,954,299	63,610,578

Counsel for Government read in evidence extract from House Document No. 1442, Sixty-second Congress, third session, entitled, **"Increase in Prices of Anthracite Coal, etc,"** page 90, as follows:

INCREASE IN PRICES OF ANTHRACITE COAL.

Tons of anthracite coal shipped by each railroad during first 11 months of 1910, 1911, and 1912, and per cent of increase or decrease in 1912, as compared with 1910 and 1911.

Railroad companies.	Tons of anthracite coal shipped during January to November.			Percentage increase or decrease.	
	1910	1911	1912	1912 compared with 1911.	1912 compared with 1910.
Philadelphia & Reading Ry	11,181,353	12,027,031	11,628,506	3.31	4.0
Lehigh Valley R. R	10,144,002	11,093,295	10,682,836	7.06	5.3
365 Central R. R. of New Jersey	7,623,016	8,397,859	7,581,998	9.71	.1
Delaware, Lackawanna & Western R. R.	8,736,977	9,042,372	8,214,645	9.15	5.9
Delaware & Hudson	5,974,235	6,613,806	5,762,209	12.88	3.5
Penna. R. R	5,549,310	5,893,930	5,004,832	15.09	9.8
Erie R. R	6,884,945	8,078,080	6,768,147	16.22	1.7
N. Y. Ontario & Western Ry	2,529,760	2,292,510	2,022,843	11.76	20.0
Total	58,674,208	63,838,872	57,666,076	9.67	1.7

Counsel for Government read in evidence extract from pamphlet entitled **"The Production of Coal in 1910,"** issued by the United States Geological Survey, from page 184, as follows:

Anthracite production in 1909 and 1910, by counties, in long tons.

County.	Shipped.	Sold to local trade and employees.	Used at mines for steam and heat.	Total.
1909.				
Carbon	1,961,362	77,945	260,872	2,300,179
Columbia	847,665	21,713	118,503	987,881
Dauphin	643,040	23,871	165,022	832,033
Lackawanna	16,396,270	593,772	1,533,918	18,523,960
Luzerne	24,426,413	781,827	2,864,321	28,072,561
Northumberland	4,630,175	106,728	622,632	5,349,535
Schuylkill	12,785,329	240,617	2,073,031	15,118,977
Sullivan	525,644	6,234	39,086	570,964
Susquehanna & Wayne	471,881	8,399	41,440	521,720
River dredges	9,136	85,243	1,810	96,289
Total	62,697,495	1,946,069	7,720,685	72,384,249
366 1910.				
Carbon	2,438,321	64,810	299,734	2,802,865
Columbia	728,370	12,837	104,141	845,348
Dauphin	602,948	55,931	132,364	791,243
Lackawanna	17,390,927	453,670	1,721,768	19,566,365
Luzerne	24,886,361	732,449	2,928,953	28,547,763
Northumberland	4,960,463	119,408	633,398	5,713,269
Schuylkill	13,678,396	279,137	1,986,641	15,944,174
Sullivan	518,809	6,806	39,175	564,983
Susquehanna	508,086	9,935	47,373	565,394
River dredges	22,263	69,017	553	91,833
Total	65,735,024	1,804,082	7,894,140	75,433,266

Counsel for Government offered in evidence certified copies under the seal of the Interstate Commerce Commission of the interstate and through routes in which the Philadelphia and Reading Railway Company, the Central Railroad Company of New Jersey, and the

Lehigh and New England Railroad Company are originating parties to New York, Baltimore, and Washington and also to New England points (marked "**Exhibits Nos. 47 and 48**").

Defendants' counsel object to the admission of secondary evidence of these tariffs. The statutes provide what shall be evidence of the tariffs, and the defendants object to anything being offered except the tariffs.

Mr. COUDERT. The Government offers these statements because they have been made by the Interstate Commerce Commission and by their experts, and that the tariffs themselves are very voluminous, 367
containing a great deal of matter that can have no relevancy to this case, and, if there are any inaccuracies therein, they can be and should be pointed out by counsel for the defendants.

These copies will be found spread on the record at pages 279 and 296.

Counsel for Government offered in evidence **answers filed in re investigation of rates, practices, rules, and regulations governing the transportation of anthracite coal before the Interstate Commerce Commission, docket No. 4914, and interposed on behalf of the Philadelphia and Reading Railway Company,** as follows: 368

Answer to question No. 1, page 3, J.

J) Information indicated in form next following concerning 50 largest holders in the aggregate of voting securities at date of last closing of stock books. 369

Name.	Address.	Number of votes.	Par value of stock held.		Other voting securities held.	
			Common.	Preferred.	Par value.	Name of security.
Central Trust Company of New York as trustee under mortgage of Reading Company and the Philadelphia & Reading Coal and Iron Company, dated January 5, 1897.	54 Wall Street, New York City.	849,534	$42,476,700	None.	None.	None.
Reading Company	Reading Terminal, Philadelphia, Pa.	75	3,750	None.	None.	None.
George F. Baer	do.	3	150	None.	None.	None.
George F. Baker	2 Wall Street, New York City.	3	150	None.	None.	None.
Henry A. du Pont	100 Maryland Avenue, Wilmington, Del.	3	150	None.	None.	None.
Henry C. Frick	111 Broadway, New York City.	3	150	None.	None.	None.
Edward T. Stotesbury	Chestnut and Fifth Sts., Philadelphia, Pa.	3	150	None.	None.	None.
Peter A. B. Widener	Land Title Building, Philadelphia, Pa.	3	150	None.	None.	None.
Daniel Willard	Baltimore, Md.	3	150	None.	None.	None.
George M. Dallas	1514 Pine Street, Philadelphia, Pa.	1	50	None.	None.	None.
James M. Landis	1001 Chestnut Street, Philadelphia, Pa.	1	50	None.	None.	None.
Frederick Reel	Reading Terminal, Philadelphia, Pa.	1	50	None.	None.	None.
Edwin F. Smith	Commonwealth Trust Building, Philadelphia, Pa.	1	50	None.	None.	None.
		849,634	42,481,700			

370 **Answer to question No. 22—table showing revenue from transportation and revenue from operation other than transportation for the Philadelphia & Reading Railway Company for the years 1910 to 1912, inclusive, as follows:**

371 PHILADELPHIA & READING RAILWAY COMPANY.

	Years ended June 30th—				
	1908	1909	1910	1911	1912
I.—Revenue from transportation.					
1. Freight revenue:					
(a) Anthracite coal	$13,026,030.53	$12,185,554.66	$11,628,868.25	$12,107,840.70	$11,543,641.3
(b) Other freight	19,054,167.49	19,059,399.35	23,632,060.19	23,273,106.69	23,997,585.6
2. Passenger revenue	6,211,933.58	6,182,421.45	7,059,476.94	6,995,801.30	6,908,759.9
3. Excess baggage revenue	25,520.79	27,936.01	28,786.04	30,441.29	33,190.2
4. Parlor and chair car revenue	0	0	0	0	0
5. Mail revenue	117,801.32	118,511.61	118,136.60	118,277.75	117,064.9
6. Express revenue	607,407.69	559,873.98	589,421.20	668,591.81	662,675.9
7. Milk revenue on passenger trains	213,286.68	200,629.70	262,611.18	294,435.87	313,673.1
8. Other passenger train revenue	87,414.76	86,394.74	88,701.16	97,414.63	120,449.6
Total passenger service revenue (Nos. 2 to 8)	7,263,364.82	7,175,767.49	8,147,133.12	8,204,962.65	8,155,821.9
9. Switching revenue	208,145.05	257,313.94	395,190.95	415,529.92	356,449.9
10. Special service train revenue	10,429.55	35,043.55	14,678.49	30,308.36	14,463.7
11. Miscellaneous transportation revenue	1,123.98	51,222.40	46,247.81	13,220.51	4,629.0
Total revenue from transportation (Nos. 1 to 11)	39,563,261.47	38,764,301.39	43,864,178.81	44,044,968.83	44,072,590.0
II.—Revenue from operation other than transportation.					
12. Station and train privileges	71,726.81	66,260.96	72,725.80	69,989.86	69,411.2
13. Parcel-room receipts	19,425.95	20,419.70	22,775.75	24,872.95	25,870.9
14. Storage (mdse. freight)	2,089.03	2,229.31	2,233.01	2,793.83	2,488.9
15. Storage (baggage)	3,615.90	3,011.89	3,600.20	4,533.90	4,241.2
16. Car service	159,283.58	88,952.45	170,278.99	130,733.81	137,764.0
17. Telegraph and telephone	116.54	5,107.21	6,719.96	6,951.92	8,464.2
18. Rents of buildings and other property	14,807.30	55,182.00	845.41	13,074.99	12,195.0
19. Miscellaneous	44,550.41	54,768.74	73,247.75	93,672.14	167,884.1
Total revenue from operation other than transportation	315,620.45	295,932.26	350,736.05	320,473.51	403,933.9
Total operating revenues	39,878,881.92	39,060,233.65	44,214,914.86	44,365,442.34	44,476,524.7

Answer to question No. 30—showing the tonnage and the tons carried 1 mile, and the revenue, for the years 1900, 1905, 1910, and 1912, on anthracite coal, or other freight and upon all freight, as follows: 372

PHILADELPHIA & READING RAILWAY COMPANY. 373

	Anthracite coal.		
	Tons.	*Tons 1 mile.*	*Revenue.*
1900	11,953,263.06	1,180,499,530.12	$9,552,961.19
1905	13,472,994.02	1,360,744,700.03	12,368,786.06
1910	12,241,165.12	1,285,559,671.04	11,628,868.25
1912	12,571,938.09	1,342,433,070.05	11,543,641.30

	Other freight.		
	Tons.	*Tons 1 mile.*	*Revenue.*
1900	19,276,502.17	1,665,097,570.14	$11,568,843.35
1905	28,981,744.00	2,670,528,650.00	17,831,100.96
1910	38,090,594.12	3,667,323,462.10	23,632,060.19
1912	39,294,760.13	3,819,827,211.01	23,997,585.48

	All freight.		
	Tons.	*Tons 1 mile.*	*Revenue.*
1900	31,229,766.03	2,845,597,101.06	$21,121,804.54
1905	42,454,738.02	4,031,273,350.03	30,199,887.02
1910	50,331,760.04	4,952,883,133.14	35,260,928.44
1912	51,866,699.02	5,162,260,281.06	35,541,226.78

Answer to question No. 33—showing the anthracite coal tonnage transported to points on and via Philadelphia and Reading Railway Company, exclusive of shipments from storage yards, for the year ending June 30, 1912, as follows: 374

PHILADELPHIA & READING RAILWAY COMPANY. 375

Anthracite coal tonnage transported to points on and via Philadelphia & Reading Railway Company (exclusive of shipments from storage yards) for the year ending June 30th, 1912.

	Paying freight.	Company's use.
1911.	*Gr. tons cwt.*	*Gr. tons cwt.*
July	712,119.07	68,821.00
August	768,003.09	60,389.13
September	892,623.06	95,138.12
October	1,101,641.18	125,642.18
November	1,117,402.12	113,181.13
December	1,093,152.07	123,306.03
1912.		
January	1,092,500.14	75,017.00
February	1,115,875.06	69,271.01
March	1,354,106.10	149,931.17
April	24,421.02	14,940.11
May	133,270.00	1,493.11
June	1,084,806.04	185,963.02
Total	10,489,922.15	1,083,093.19

376 Answer to question No. 34—table showing shipments of anthracite coal for the month of November, 1912, segregated by sizes and shippers, as follows:

377 PHILADELPHIA & READING RAILWAY COMPANY.

Sizes.	Commercial.		Company's use.
	P. & R. C. & I. Co.	All other shippers.	P. & R. C. & I. Co.
	Gross tons cwt.	*Gross tons cwt.*	*Gross tons cwt.*
Prepared	597,158.10	149,614.06	27,075.08
Pea	144,327.07	39,270.08	14,598.11
Smaller than pea	190,340.03	79,109.12	160,943.11
Total	931,826.00	267,994.06	142,617.07

378 Answer to question No. 38—table showing shipments from collieries and washeries named in Philadelphia & Reading Railway Company I. C. C. A–434, to Philadelphia, Port Richmond, and Port Reading, for the month of November, 1912, as follows:

379

	Mileage.	Tons.	Gross tons, cwt.
Philadelphia, Pa.	110.2 from Tamaqua	5,758.18	
	110.3 from St. Clair	113,798.10	
	112.2 from Cressona	33,589.19	153,147.07
Port Richmond, Pa. (tide)	110.2 from Tamaqua	213.13	
	110.3 from St. Clair	97,723.10	
	112.2 from Cressona	43,527.11	141,464.14
Port Reading, N. J.	174.7 from St. Clair	100,314.05	
	167.6 from Cressona	78,556.08	
	174.6 from Tamaqua	711.14	
	174.6 from Tamaqua (local)	967.00	180,549.07

380 Answer to question No. 28—statement showing for the Philadelphia & Reading Railway Company for the years 1900, 1905, and 1908 to 1912, inclusive, of revenues, expenses, and dividends, as follows:

381 PHILADELPHIA & READING RAILWAY COMPANY.

	Years ended June 30th—			
	1900	1905	1908	1909
Total operating revenues	$26,109,733.53	$36,832,069.91	$39,878,881.92	$39,060,233.65
Total operating expenses	15,349,631.99	19,511,143.87	25,458,296.06	23,825,678.53
Total revenues (outside operations)	1,674,017.16	2,677,417.46	2,960,944.63	1,818,133.90
Total expenses (outside operations)	880,763.50	2,013,768.49	1,937,288.53	1,381,821.65
Total operating income	11,001,866.84	17,365,293.68	14,688,563.32	14,836,328.85
Total other income	0	0	1,762,057.32	770,715.52
Total gross corporate income	11,001,866.84	17,365,293.68	16,450,620.64	15,607,044.40
Total net corporate income	745,309.20	7,359,162.22	6,345,639.43	4,559,545.83
Total profit and loss surplus	745,309.20	7,359,162.22	6,345,639.43	4,559,545.83
Total mileage of single track operated at close of year	1,000.19	1,015.13	1,006.60	1,024.03

PHILADELPHIA & READING RAILWAY COMPANY—Continued.

	Years ended June 30th—		
	1910	1911	1912
Total operating revenues	$44,214,914.86	$44,365,442.34	$44,476,524.79
Total operating expenses	26,563,617.62	27,675,842.09	28,516,878.09
Total revenues (outside operations)	1,871,897.91	1,957,888.28	1,934,046.12
Total expenses (outside operations)	1,541,937.76	1,632,094.30	1,628,885.38
Total operating income	16,966,282.48	15,903,392.05	15,207,813.24
Total other income	883,208.45	972,424.65	789,736.41
Total gross corporate income	17,849,490.93	16,875,816.70	15,997,549.65
Total net corporate income	6,632,375.35	4,330,408.69	5,508,838.49
Total profit and loss surplus	6,651,293.82	3,283,080.42	5,482,248.53
Total mileage of single track operated at close of year	1,022.10	1,014.50	1,015.16

Dividend paid in fiscal year—
June 30, 1904, $2,400,000.00—from surplus of June 30, 1903.
June 30, 1905, 4,000,000.00—from surplus of June 30, 1904.
June 30, 1906, 6,000,000.00—from surplus of June 30, 1905.
June 30, 1907, 6,000,000.00—from surplus of June 30, 1906.
June 30, 1908, 6,000,000.00—from surplus of June 30, 1907.
June 30, 1909, 5,000,000.00—from surplus of June 30, 1908.
June 30, 1910, 5,000,000.00—from surplus of June 30, 1909.
June 30, 1911, 5,000,000.00—from surplus of June 30, 1910.
June 30, 1912, 6,372,255.00—from surplus of June 30, 1911.

Answer to question No. 39—statement showing all collieries served by the Philadelphia and Reading Railway Company, names of shippers, and output, as follows: 382

PHILADELPHIA & READING RAILWAY COMPANY. 383

Colliery or washery.	Name of shipper.	Miles distant from concentration points.				Tamaqua.	Cressona.	Output.
		Shamokin.	St. Clair.	Mahanoy Plane.	Haucks.			
North Franklin	P. & R. C. & I. Co.	8.2	3.8					26,270.19
Katharine	Troverton Coal Co.	10.8	38.2					13,542.15
Bear Valley	P. & R. C. & I. Co.	3.1	33.5					27,948.01
Burnside	do	2.3	33.3					34,627.07
Henry Clay	do	1.1	29.8					29,923.02
Buck Ridge No. 2	Buck Ridge Mining Co.	2.6	28.9					2,197.17
Corbin	Excelsior Coal Co.	4.7	27.1					14,511.10
Excelsior	do		26.7					5,212.18
Enterprise	Enterprise Coal Co.	7.2	25.9					19,849.14
Locust Gap	P. & R. C. & I. Co.	10.1	20.6		26.5			44,885.05
Alaska	do	7.9	2.3					29,493.19
Ryan & Bergen	Ryan & Bergen		30.6					92.15
Natalie	Colonial Collieries Co	8.1	22.3					12,356.16
Reliance	P. & R. C. & I. Co.	8.8	23.9					18,387.10
Potts	do	12.4	18.7					29,927.07
Bast	do	20.5	11.8					22,188.13
Hammond	do		9.7	26.4				35,221.07
West Shenandoah	do		12.6	29.3				51,060.01
Oxford Coal Co.	Maderia Hill & Co.		11.2	27				4,477.11
Cambridge	Cambridge Coal Co.		13.2	29				8,230.04
Shenandoah City	P. & R. C. & I. Co.		12.8	29.5				34,491.02
Kehley Run	Thomas Colliery Co.		14.6	30.8	18.8			28,204.00
Hudson	H. A. Smith & Co.		12					612.03
Stanton	Brookwood Coal Co.		7.8	1.5				6,530.06
Girard, Bear Ridge	W. R. McTurk Coal Co.		8.7	21.6				9,787.08
Gilberton	P. & R. C. & I. Co.		9.1	26.1				13,075.13
Draper	do		9.8	26.8				14,909.00
Boston Run	do		10.5	27				15,833.02
St. Nicholas	do		11	27.9	8.8			45,212.06
Suffolk	do		10.6	28.1				
Maple Hill	do		11.8	27.6	9.2	14.1		69,722.11
Ellangowan	do		12.2	28.8				44,911.15

PHILADELPHIA & READING RAILWAY COMPANY—Continued.

Colliery or washery.	Name of shipper.	Miles distant from concentration points.						Output.
		Shamokin.	St. Clair.	Mahanoy Plane.	Haucks.	Tamaqua.	Cressona.	
Tunnel Ridge	P. & R. C. & I. Co.		11.8	28.7	7.7			12,686.16
Mahanoy City	do		13.5	30.3				20,314.07
North Mahanoy	do		13.6	30.4	6.5	11.4		33,784.19
Morea	Weston Dodson & Co		3.4					17,020.12
Pine Hill	Pine Hill Coal Co		3.4					8,589.08
Lytle	Lytle Coal Co		3.4					6,137.12
East Lehigh	Shepp Bros					.3		2,850.09
Bell	Gorman & Campion		10.7					3,338.07
Silver Hill	Phillips Coal Co		7.4					2,749.10
Maryd	Maryd. Coal Co		14.1					9,276.5
Lucie R	Pt. Carbon Coal Co		3.1					3,318.11
Brockton	Sch. Lehigh Coal Co		10.6					4,773.12
Silver Creek	P. & R. C. & I. Co		8.7					42,248.12
Eagle Hill	do		5.2					20,842.16
384 Mount Hope	Mt. Hope Coal Co		4.5					5,447.15
St. Clair	St. Clair Coal Co		5.5					28,362.18
Howard	White & Co		4.5					2,963.08
Wadesville	P. & R. C. & I. Co		4.8					24,141.06
Laurel Run	Butcher Creek Coal Co.						11.6	1,514.15
Ellsworth	J. H. Davis						12.3	1,994.17
Pine Knot	P. & R. C. & I. Co						10.8	45,110.14
Buck Run	Buck Run Coal Co						14	18,791.12
Oak Hill	Oak Hill Coal Co						9	22,877.06
Phoenix Park No. 3							10.1	16,413.15
Black Heath No. 2	W. W. Scott Est						9.8	21.12
Otto	P. & R. C. & I. Co						11.2	24,448.18
Good Spring	do						22.3	27,177.04
Lincoln	do						24.8	37,507.08
W. Brookside	do						27.5	26,181.19
Coleraine	A. S. Van Winkle & Co.				14.8	11		11,606.14
Schuylkill Haven Jig House.	P. & R. C. & I. Co						12.1	96,838.11
Wolf Creek	Wolf Creek Coal Co						8.9	3,188.05

385 Answer to question No. 25—statement showing the revenue from the operations of the Port Richmond Coal Docks, as follows:

PORT RICHMOND COAL DOCKS.

A—Location	
B—Revenue from anthracite coal operations	$249,324.40
C—Revenue from other operations	387,594.10
D—Total revenue	636,918.50
E—Operating expenses anthracite coal operations	
F—Operating expenses other operations	
G—Total operating expenses	333,200.83
H—Net revenue	303,717.67

386 Answer to question No. 26—statement showing the revenue from Port Richmond Harbor Terminal transfers, as follows:

PHILADELPHIA & READING RAILWAY COMPANY.

PORT RICHMOND HARBOR TRANSFER.

A—Location	
B—Revenue from anthracite coal operations	$62,862.75
C—Revenue from other operations	410,589.57
D—Total revenue	473,452.32
E—Operating expenses anthracite coal operations	
F—Operating expenses other operations	
G—Total operating expenses	304,804.33
H—Net revenue	168,647.99

Answer to question No. 31—statement showing transshipment allowance at Port Richmond, with the names of the shippers, as follows: 387

PHILADELPHIA & READING RAILWAY COMPANY. 388

TRANSSHIPMENT AT PORT RICHMOND.

Name of shipper.	Year ended June 30th, 1912.					
	July.	August.	September.	October.	November.	December.
P. & R. C. & I. Co.	$38,397.06	$42,033.74	$37,727.77	$53,439.08	$50,226.67	$51,270.26
O. Darlington & Co.	47.61	111.60		46.85	51.90	
W. C. Kirk & Co.	220.70		173.38			
W. A. Marshall & Co.	212.40					
Weston Dodson & Co.	1,050.87	2,042.08	689.65	513.95	1,071.17	
Chas. D. Norton Co.	455.09	201.98	853.41	727.70	762.53	559.00
Smith, Lineweaver & Co.	45.30			227.50	295.45	374.08
Lehigh Coal & Navigation Co.	46.82	421.70	1,890.52		665.16	2,898.38
H. Gawthrop & Co.	54.07		565.85	109.36	104.20	128.80
W. R. McTurk & Co.	237.75	136.41	289.27	217.84	179.00	
Madeira, Hill & Co.	1,515.30	2,510.13	1,338.35	1,541.80	606.50	1,431.15
Thorne, Neale & Co.	246.48	508.88	346.43	243.25	429.68	46.75
Geo. W. Edmonds & Co.	106.25					
Chas. Warner Co.					53.75	
Maryd. Coal Co						348.00
McClennan Coal & Coke Co.						
Swain Bros.	57.00	8.40		60.30	91.20	
Williams, Darnell & Co.	147.70					
R. & P. C. & I. Co.		93.60				
Whitney & Kemmerer		242.00		133.11		
Peale, Peacock & Kerr		36.80		268.50	380.25	178.00
Susquehanna Coal Co.		36.05			45.35	
P. Heilner & Son		54.81	168.43	243.90		208.05
Slattery Bros.		5.54	24.80			231.30
Est. A. S. Van Winkle				166.20	70.50	265.60
Tyler Coal & Coke Co.				90.90		178.94
Mt. Hope Coal Co.				49.20	45.43	
Total	42,840.40	48,443.72	44,067.86	58,079.44	55,078.74	58,118.31

Name of shipper.	Year ended June 30th, 1912.						
	January.	February.	March.	April.	May.	June.	Total.
P. & R. C. & I. Co.	$44,817.24	$36,600.98	$51,064.30	$19,360.80	$8,735.65	$58,679.84	$492,353.39
O. Darlington & Co.			103.01				360.97
W. C. Kirk & Co.						128.75	522.83
W. A. Marshall & Co.							212.40
Weston Dodson & Co.	873.25	348.90		1,976.16	391.35		8,957.38
Chas. D. Norton Co.	735.80	265.66	102.35		2.10	229.21	4,894.83
Smith, Lineweaver & Co.	529.55	259.14	78.00			421.30	2,230.22
Lehigh Coal & Navigation Co.	1,172.40	2,027.35	4,066.04	1,380.52	486.74	542.61	15,598.24
H. Gawthrop & Co.	41.80		108.30			76.95	1,189.33
W. R. McTurk & Co.	97.75					400.24	1,558.26
Madeira, Hill & Co.	1,341.40	1,073.50	1,629.66	483.75	244.35	2,380.50	16,096.39
Thorne, Neale & Co.	427.55	259.20	387.14	93.90		185.80	3,175.06
Geo. W. Edmonds & Co.						114.00	220.25
Chas Warner Co.							53.75
Maryd. Coal Co	84.60	303.90	198.90			154.50	1,089.90
McClennan Coal & Coke Co.			33.20				33.20
Swain Bros.							216.90
Williams, Darnell & Co.							147.70
R. & P. C. & I. Co.							93.60
Whitney & Kemmerer			141.00	112.80		187.20	816.11
Peale, Peacock & Kerr							863.55
Susquehanna Coal Co.		1,888.63	3,451.45	223.24		1,001.91	6,646.63
P. Heilner & Son			60.75				735.94
Slattery Bros.		138.00	274.00			20.50	694.14
Est. A. S. Van Winkle	148.30	73.80	154.50	6.30		127.95	1,013.15
Tyler Coal & Coke Co.	792.70	137.85	88.50				1,288.89
Mt. Hope Coal Co.			27.00				121.63
Total	51,062.34	43,376.91	61,968.10	23,637.47	9,860.19	64,651.16	561,184.64

389 Answer to question No. 36—statement showing coal shipments to Port Reading for the month of November, 1912, with the number of cars and the gross revenue, as follows:

PHILADELPHIA & READING RAILWAY COMPANY.

Anthracite-coal shipments to Port Reading, N. J., during the month of November, 1912.

Total number of cars		5,280.00
Total gross tons		179,582.07
Average tonnage per carload	gross tons..	34.00
Gross revenue		$327,645.04
390 Average revenue per car load		$62.050

Practically 100 per cent of cars returned empty.

391 Answer to question No. 37—statement showing rates to New York Harbor via Port Reading and Port Liberty, including forty-cent transfer allowance, as follows:

PHILADELPHIA & READING RAILWAY COMPANY.

FORT READING, N. J.

(Page 1.)

P. & R. Railroad Tariff I. C. C. A. 29, taking effect September 7th, 1896.

	From collieries shipping via—					
	Schuylkill Haven & Tamaqua.			Pine Grove.		
	Prepared sizes.	Pea coal.	Smaller sizes.	Prepared sizes.	Pea coal.	Smaller sizes.
To New York, N. Y., within lighterage limits via Pt. Reading, N. J., discharged	195	180	160	210	195	180
Allowance for barge service and discharging in N. Y. Harbor	40	40	40	40	40	40
Net rate, including dumping into vessels	155	140	120	170	155	140

The rates shown above were in effect during the month of November, 1897, 1898, 1899, and 1900.

P. & R. Ry. Tariff I. C. C. A. 190, taking effect September 25, 1901.

	From collieries shipping via—							
	Schuylkill Haven & Tamaqua.				Pine Grove.			
	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
To New York Harbor within lighterage limits via Pt. Rdg. discharged	195	180	165	150	210	195	180	165
Allowance for barge service and discharging in N. Y. Harbor	40	40	40	40	40	40	40	40
Net rate, including dumping into vessels	155	140	125	110	170	155	140	125

The rates shown above were in effect during the month of November, 1901, 1902, 1903, 1904, and 1905.

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PHILADELPHIA & READING RAILWAY COMPANY. 392

(Page 2.)

PORT READING, N. J.

P. & R. Ry. tariff I. C. C. A. 233, taking effect September 4, 1906.

	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
To New York, N. Y., within lighterage limits via Pt. Rdg. discharged	195	180	165	150
Allowance for boat freight and discharging in N. Y. Harbor, etc., per tariff	40	40	40	40
Net rate, including dumping into vessels	155	140	125	110

The above rates were in effect during the month of November, 1906, 1907, 1908, 1909, 1910, and 1911.

P. R. Ry. tariff I. C. C. A. 432, taking effect September 15, 1912.

	Prepared sizes.	Pea coal.	Buck. No. 1.	Buckwheat No. 2, smaller.
To Pt. Rdg. Coal Piers, N. J.	195	180	165	150
Allowance	40	40	40	40
Net rate, including dumping into vessels	155	140	125	110

The above rates were in effect during the month of November, 1912.

393

PORT LIBERTY, N. J.

P. & R. Ry. tariff I. C. C. A. 216, taking effect September 3rd, 1904.

	From collieries in Shamokin, Mahanoy, Schuylkill, and Lorberry districts.				From collieries in Lykens Vally districts.			
	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
To New York, N. Y., within lighterage limits via Pt. Liberty, N. J., discharged	195	180	165	150	210	195	180	165
Allowance for boat frt. and discharging in N. Y. Harbor	35	35	35	35	35	35	35	35
Net rate, including dumping into vessels	160	145	130	115	175	160	145	130

The above rates were in effect during the month of November, 1904 and 1905.

P. & R. Ry. tariff I. C. C. A. 234, taking effect September 4, 1906.

	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
To New York, N. Y., within lighterage limits via Pt. Liberty, discharged	195	180	165	150
Allowance for boat frt. and discharging in N. Y. Harbor, etc., per tariff	35	35	35	35
Net rate, including dumping into vessels	160	145	130	115

The above rates were in effect during the month of November, 1906, 1907, 1908, 1909, 1910, and 1911.

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394 *P. & R. Ry. tariff I. C. C. A. 416, taking effect February 23, 1912.*

	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2 and smaller.
To Port Liberty coal piers	195	180	165	15
Allowance	35	35	35	3
Net rate, including dumping into vessels	160	145	130	11

395 The above rates were in effect during the month of November, 1912.

Answer to question No. 27—statement showing revenue from sea-going tugs and barges, as follows:

PHILADELPHIA & READING RAILWAY COMPANY.

SEA TUGS AND BARGES.

A—Location		$725,795.85
B—Revenue from anthracite coal operations		434,430.25
C—Revenue from other operations		
D—Total revenue		1,160,226.10
E—Operating expenses anthracite coal operations		
F—Operating expenses other operations		1,074,388.93
G—Total operating expenses		
H—Net revenue		85,837.17

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Counsel for Government offered in evidence certain statements from volume showing answers of the Philadelphia and Reading Coal and Iron Company in re investigation before Interstate Commerce Commission, docket 4914, as follows:

Answer to question No. 52—statement showing the operating revenues and operating expenses of the Philadelphia and Reading Coal and Iron Company for the years ending November 30, 1907 to 1912, inclusive, as follows:

The Philadelphia and Reading Coal and Iron Company—Statement of operating revenues and operating expenses for the years ended June 30th named below.

	1907	1908	1909	1910	1911	1912
	Amount.	Amount.	Amount.	Amount.	Amount.	Amount.
RECEIPTS.						
Coal sales (anthracite)	$37,352,804.44	$36,669,481.25	$33,411,276.83	$31,619,651.76	$32,685,270.72	$34,021,026.09
Coal sales (bituminous)	926,104.32	859,011.61	909,809.51	1,080,488.78	1,152,915.31	1,186,203.29
Coal rents	281,622.17	308,755.24	248,673.97	268,291.84	298,721.37	248,717.75
House and land rents	116,141.72	124,523.86	127,363.33	129,653.86	131,061.95	131,072.52
Interest and dividends	38,008.49	15,199.07	71,784.79	100,720.37	95,140.05	116,283.83
Miscellaneous	32,880.49	37,449.58	23,786.03	19,129.50	17,021.11	30,349.37
Total receipts	38,747,561.63	38,014,420.61	34,792,694.46	33,217,936.11	34,390,130.51	35,733,652.85
EXPENSES.						
Mining coal and repairs	18,741,729.48	19,026,334.47	18,091,769.24	17,616,029.67	18,194,578.04	18,382,202.00
Improvements at collieries, etc	1,345,228.73	1,286,010.65	1,172,204.79	1,216,015.10	1,139,040.88	839,742.00
Coal purchased (anthracite)	2,494,462.53	2,497,487.18	2,111,245.93	1,826,169.60	1,906,678.20	1,618,058.98
Coal purchased (bituminous)	841,991.45	804,653.91	838,168.64	1,040,909.25	1,070,565.70	1,100,315.16
Royalty of leased collieries	677,143.64	667,722.48	594,181.66	563,224.04	510,686.74	458,522.89
Transportation of coal by rail	8,819,396.84	9,188,714.99	7,909,920.49	7,250,288.32	7,114,995.43	6,704,904.30
Transportation of coal by water	1,340,071.56	1,463,367.59	1,170,407.82	1,042,277.02	1,140,539.77	995,791.45
Handling coal at depots	543,137.08	482,126.40	441,512.00	410,836.50	483,037.41	434,451.75
Taxes on coal lands and improvements	296,952.68	339,087.63	353,700.00	344,534.76	456,018.50	589,728.97
Improvements and repairs of houses	53,039.65	49,849.13	58,116.77	84,085.49	78,349.19	32,862.10
Damages account coal dirt	15,767.73	2,054.02	7,896.52	14,577.65	4,971.48	6,309.10
All other expenses	1,007,578.34	984,331.46	947,816.99	1,024,593.89	1,082,850.77	1,086,331.42
Coal sold from stock	444,495.72				790,297.45	2,363,317.79
Coal added to stock		1,200,926.54	478,867.30	422,748.09		
Total expenses	36,620,995.43	35,590,813.37	33,218,073.55	32,010,793.20	33,972,609.56	34,612,537.91
Profit in operating	2,126,566.20	2,423,607.24	1,574,620.91	1,207,142.91	417,520.95	1,121,114.94

400 **Answer to question No. 53—General balance sheets for years 1907 to 1912, inclusive, as follows:**

The Philadelphia and Reading Coal and Iron Company general balance sheet June 30, 1907.

Dr.	Amount.	Total.		Amount.	Total.
CAPITAL ACCOUNTS.			401 CAPITAL ACCOUNTS.		
Coal lands	$56,800,810.49		P. & R. collateral sinking fund loan, 1892–1932		$1,260,000.00
Timberlands	833,717.32		Capital stock		8,000,000.00
New York and eastern depots	731,539.77		Reading company		79,195,702.68
Western yards and depots	812,666.34				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	374,791.47				
Storage yards and washeries	851,892.15				
Other real estate	355,897.90				
Improvements and equipments at collieries	13,092,635.26				
Stocks and bonds of companies controlled	9,596,359.05	$84,003,447.42			
CURRENT ASSETS.			CURRENT LIABILITIES.		
Cash on hand	469,660.86		Pay rolls and vouchers	$1,143,609.03	
Coal accounts	3,845,347.21		Due for coal purchased	233,537.14	
Rent accounts	35,029.24		Due for royalty on coal mined	140,587.63	
Companies and individuals	454,409.92		Freight and tolls due foreign roads	166,563.13	
Coal on hand	1,870,170.14		Companies and individuals	120,332.65	
Supplies and materials on hand	1,202,166.78	7,876,784.15	Interest due and uncollected	8,632.50	
			Interest and taxes accrued	168,851.34	1,982,113.42
Depletion of coal-lands fund:			Reading company account interest		400,000.00
Cash	426.18		P. & R. Railway Company current account		1,415,104.92
Securities	1,487,093.61	1,487,519.79	Profit and loss to June 30, 1906	1,259,920.54	
		73,608.13	Loss for year ended June 30, 1907	71,482.02	
Stocks, bonds, and mortgages					1,188,438.52
		93,441,359.49			93,441,359.49

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The Philadelphia and Reading Coal and Iron Company general balance sheet June 30, 1908.

Cr.

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403 *The Philadelphia and Reading Coal and Iron Company general balance sheet June 30, 1908.*

Dr.	Amount.	Total.	Cr.	Amount.	Total.
CAPITAL ACCOUNTS.			403 CAPITAL ACCOUNTS.		
Coal lands	$52,333,242.40		P. & R. collateral sinking fund loan, 1882-1932		$1,230,000.00
Timberlands	836,531.98		Capital stock		8,000,000.00
New York and eastern depots	724,507.46		Reading company		75,241,269.83
Western yards and depots	954,665.90				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	374,791.47				
Storage yards and washeries	851,892.15				
Other real estate	361,814.48				
Improvements and equipments at collieries	13,092,635.26				
Stocks and bonds of companies controlled	9,554,914.75				
		$79,638,133.52			
CURRENT ASSETS.			CURRENT LIABILITIES.		
Cash on hand	451,362.84		Pay rolls and vouchers	$1,168,960.03	
Bills receivable	5,253.85		Due for coal purchased	168,950.53	
Coal accounts	3,009,662.94		Due for royalty on coal mined	140,160.55	
Rent accounts	27,172.45		Freight and tolls due foreign roads	25,420.65	
Companies and individuals	465,481.70		Companies and individuals	148,159.22	
Coal on hand	3,000,353.97		Interest due and uncollected	8,712.50	
Supplies and materials on hand	1,117,243.87		Interest and taxes accrued	239,221.29	
		8,076,531.62			1,899,584.77
Depletion of coal-lands fund:			P. & R. Railway Company current account		1,525,102.16
Cash	419,839.12		Profit and loss to June 30, 1907	1,188,438.52	
Securities	1,083,093.61		Profit for year ended June 30, 1908	207,523.77	
		1,502,932.73			1,395,962.29
Stocks, bonds, and mortgages		74,321.18			
		89,291,919.05			89,291,919.05

The Philadelphia and Reading Coal and Iron Company, general balance sheet, June 30, 1909.

Dr.	Amount.	Total.	Cr.	Amount.	Total.
CAPITAL ACCOUNTS.			CAPITAL ACCOUNTS.		
			P. & R. collateral sinking-fund loan, 1892-1932		$1,200,000.00
			Capital stock		8,000,000.00
			Reading Company		74,800,254.83
Coal lands	$51,410,788.67				
Timber lands	838,827.59				
New York and eastern depots	724,507.46				
Western yards and depots	1,046,446.45				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	376,169.47				
Storage yards and washeries	851,892.15				
Other real estate	364,339.25				
Improvements and equipment at collieries	12,939,224.33				
Stocks and bonds of companies controlled	9,554,914.75				
		$78,680,247.79	CURRENT LIABILITIES.		
CURRENT ASSETS.					
			Pay rolls and vouchers	$985,771.33	
Cash on hand	358,768.79		Due for coal purchased	133,609.51	
Bills receivable	1,500.00		Due for royalty on coal mined	136,071.64	
Coal accounts	3,283,662.97		Freight and tolls due foreign roads	27,772.45	
Rent accounts	23,933.90		Companies and individuals	229,213.89	
Companies and individuals	481,365.07		Interest due and uncollected	8,592.50	
Coal on hand	3,525,699.86		Interest and taxes accrued	257,480.37	
Supplies and materials on hand	1,324,011.33				1,788,461.69
		8,998,941.92			901,590.85
405 Depletion of coal-lands fund:			P. & R. Railway Company current account	1,395,962.29	
Cash	101,302.48		Profit and loss to June 30, 1908	66,973.71	
Securities	300,000.00		Profit for year ended June 30, 1909		1,462,936.00
		401,302.48			
Stocks, bonds, and mortgages		72,751.18			
		88,153,243.37			88,153,243.37

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Philadelphia and Reading Coal and Iron Company, general balance sheet, June 30, 1910.

Dr.	Amount.	Total.	Cr.	Amount.	Total.
CAPITAL ACCOUNTS.			CAPITAL ACCOUNTS.		
Coal lands	$50,385,195.81		P. & R. collateral sinking-fund loan, 1892-1932		$1,170,000.00
Timber lands	841,567.69		Capital stock		8,000,000.00
New York and eastern depots	790,097.35		Reading Company		75,395,786.83
Western yards and depots	1,351,570.83				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	376,169.47				
Storage yards and washeries	851,892.15				
Other real estate	386,339.25				
Improvements and equipments at collieries	12,959,224.33				
Stocks and bonds of companies controlled	9,563,914.78				
		$78,659,109.30			
CURRENT ASSETS.			CURRENT LIABILITIES.		
Cash on hand	678,200.47		Pay rolls and vouchers	$980,244.27	
Bills receivable	153.84		Due for coal purchased	137,699.65	
Coal accounts	3,109,474.69		Due for royalty on coal mined	134,974.14	
Rent accounts	35,228.49		Freight and tolls due foreign roads	31,183.09	
Companies and individuals	754,917.19		Companies and individuals	156,376.21	
Coal on hand	3,817,481.78		Matured interest unpaid	8,592.50	
Supplies and materials on hand	1,406,986.27		Interest and taxes accrued	243,082.43	
		9,782,442.73			1,692,152.29
407 Depletion of coal-lands fund:			P. & R. Railway Company current account		564,933.11
Cash	4.07		Profit in operating for year ended June 30, 1910	1,307,142.91	
Securities	300,000.00		Less fixed charges and taxes	$88,818.49	
		300,004.07	Depletion of lands fund	445,867.50	
Stocks, bonds and mortgages		72,751.18	Interest on Reading Co. loan	743,957.87	
				1,278,643.86	
		88,214,307.28	Loss for year ended June 30, 1910	71,500.95	
			Profit and loss to June 30, 1909	1,462,936.00	
					1,391,435.05
					88,214,307.28

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The Philadelphia and Reading Coal and Iron Company general balance sheet, June 30, 1911.

Dr. | Cr.

	Amount.	Total.		Amount.	Total.
CAPITAL ACCOUNTS.			409 **CAPITAL ACCOUNTS.**		
Coal lands	$49,913,026.51		P. & R. collateral sinking fund loan, 1892-1932		$1,140,000.00
Timber lands	841,660.64		Capital stock		8,000,000.00
New York and eastern depots	839,539.70		Reading Company		74,423,817.42
Western yards and depots	1,651,644.23				
Miners' and other houses	553,137.67				
Pottsville shops, real estate, and improvements	391,462.65				
Storage yards and washeries	851,892.15				
Other real estate	388,425.58				
Improvements and equipments at collieries	12,959,224.33				
Stocks and bonds of and loans to companies controlled	9,863,914.75				
		$78,253,958.21			
CURRENT ASSETS.			**CURRENT LIABILITIES.**		
Cash on hand	456,948.91		Pay rolls and vouchers	$1,147,656.33	
Coal accounts	3,480,267.74		Due for coal purchased	232,387.29	
Rent accounts	29,647.25		Due for royalty on coal mined	158,166.47	
Companies and individuals	854,523.82		Freight and tolls due foreign roads	46,617.68	
Coal on hand	3,333,268.15		Companies and individuals	133,863.05	
Supplies and materials on hand	1,517,489.23		Matured interest unpaid	7,822.50	
		9,672,145.10	Interest and taxes accrued	146,368.11	
					1,872,881.43
Stocks, bonds, and mortgages		73,151.24	P. & R. Railway Company current account		1,274,437.21
			Surplus June 30, 1910	1,391,435.05	
			Profit in operating for year ended June 30, 1911	$417,520.95	
			Less:		
			Fixed charges and taxes	$86,598.24	
			Interest on Reading Company loans	375,572.60	
			Interest on Tremont Coal Co. bonds matured—amount advanced	58,666.67	
				520,837.51	
			Loss for year ended June 30, 1911	103,316.56	
					1,288,118.49
		87,999,254.55			87,999,254.55

Dr.

	Amount.	Total.
CAPITAL ACCOUNTS.		
Coal lands	$49,397,659.97	
Timber lands	841,690.64	
New York and eastern depots	839,539.70	
Western yards and depots	1,736,979.45	
Miner's and other houses	553,137.67	
Pottsville shops, real estate, and improvements	391,462.65	
Storage yards and washeries	851,892.15	
Other real estate	388,425.58	
Improvements and equipments at collieries	12,959,224.33	
Stocks and bonds of and loans to companies controlled	9,863,914.75	
		$77,823,926.89
CURRENT ASSETS.		
Cash on hand	2,692,617.67	
Bills receivable	2,832.42	
Coal accounts	3,221,693.53	
Rent accounts	24,164.19	
Companies and individuals	796,145.72	
Coal on hand	776,701.52	
Supplies and materials on hand	1,236,240.17	
		8,750,395.22
Stocks, bonds, and mortgages		73,201.24
		86,647,523.35

Cr.

	Amount.	Total.
CAPITAL ACCOUNTS.		
P. & R. collateral sinking-fund loan, 1892-1932		$1,110,000.00
Capital stock		8,000,000.00
Reading company		73,466,529.72
CURRENT LIABILITIES.		
Pay rolls and vouchers	$1,033,421.33	
Due for coal purchased	182,953.31	
Due for royalty on coal mined	142,136.24	
Freight and tolls due foreign roads	40,836.55	
Companies and individuals	266,042.48	
Interest due and uncollected	20.00	
Interest and taxes accrued	260,149.66	
		1,925,559.52
Miners' beneficial fund		37,869.72
P. & R. Railway Company current account		647,870.25
Profit and loss to June 30, 1911	1,288,118.49	
Profit and loss July 1, 1911, to June 30, 1912	171,575.65	
		1,459,694.14
		86,647,523.35

412 Answer to question No. 51—Statement showing stock of coal companies owned by the Philadelphia and Reading Coal and Iron Company on June 30, 1912, as follows:

PHILADELPHIA AND READING COAL AND IRON COMPANY.

FORM L.

Statement of securities owned on June 30, 1912.

Name of issuing company.	Name of security.	Par value owned.			Income during year.	Date acquired.	Original cost to owner.	Book value on June 30, 1912.	Explanation of difference, if any, between column (h) and column (i).
		Pledged.	Held in sinking or other reserve funds.	In treasury.					
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Preston Coal & Improvement Co	Stock	$2,832,350.00		$9,650.00		Jan., 1872	$2,834,232.00	$2,834,232.00	These stocks were transferred from Reading company under date of reorganization, December 1, 1896.
Tremont Coal Company	do	2,957,850.00		1,000.00		do	2,958,850.00	2,958,850.00	
Mammoth Vein Coal & Iron Co	do	603,860.00		2,040.00		do	604,433.00	604,433.00	
Fulton Coal Company	do	98,435.85		6,148.85	$40,484.40	do	104,584.70	104,584.70	
Locust Gap Improvement Co	do	417,311.40		1,033.50	42,097.60	do	418,151.15	418,151.15	
Deleware Coal Co	do	259,150.00		4,000.00		June, 1874	262,850.00	262,850.00	

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Answer to question No. 54—Statement showing for the month of November, 1912, the location and output of all collieries owned and operated by the Philadelphia and Reading Coal and Iron Company, as follows: 414

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Statement giving the following information for the month of November, 1912, concerning all collieries and washeries owned and operated.

Name.	Location.	Output.
Collieries.		*Gross tons.*
Alaska	Northumberland County, Penna	29,545.00
Bast	Schuylkill County, Penna	23,239.12
Bear Ridge	do	Idle.
Bear Valley	Northumberland County, Penna	27,899.04
Boston Run	Schuylkill County, Penna	15,995.08
Brookside	do	26,228.09
Burnside	Northumberland County, Penna	35,699.10
Draper	Schuylkill County, Penna	14,856.12
Eagle Hill	do	21,099.14
Ellangowan	do	46,385.19
Gilberton	do	13,641.19
Good Spring	do	28,366.12
Hammond	do	36,468.16
Henry Clay	Northumberland County, Penna	31,475.16
John Veith	Schuylkill County, Penna	3,910.02 415
Lincoln	do	38,520.14
Locust Gap	Northumberland County, Penna	44,797.03
Mahanoy City	Schuylkill County, Penna	24,105.15
Maple Hill	do	69,533.07
North Franklin	Northumberland County, Penna	27,036.02
North Mahanoy	Schuylkill County, Penna	34,273.10
Otto	do	25,992.14
Phoenix Park	do	16,755.19
Pine Knot	do	45,210.02
Potts	Columbia County, Penna	30,952.09
Reliance	Northumberland County, Penna	20,709.18
St. Nicholas	Schuylkill County, Penna	16,271.09
Shenandoah City	do	40,045.03
Silver Creek	do	42,839.05
Suffolk	do	31,121.14
Tunnel Ridge	do	12,702.18
Valley View	do	21.10
Wadesville	do	24,858.07
West Shenandoah	do	52,421.14
Washeries.		
Anchor	Schuylkill County, Penna	Idle.
Locust Spring	Northumberland County, Penna	Idle.
Middle Creek	Schuylkill County, Penna	12.10
Plank Ridge	do	Idle.
Rausch Creek	do	Idle.
Total		952,994.16

Mr. COUDERT. Does the statement in the answer of the Philadelphia and Reading Coal and Iron Company on page 5, that it admits that no interest was paid by this defendant on these advances, refer to the total of advances, being the sum of $69,179,336.16? 416

Mr. HEEBNER. I so believed, and stated it in the answer for this reason.

Counsel for Government offered in evidence certain statements from volume showing **answers of the Central Railroad Company of New Jersey in re Investigation before Interstate Commerce Commission, docket No. 4914,** as follows:

Answer to question No. 36a—statement showing the shipments of the Central Railroad Company of New Jersey to Port Johnston Piers.

New Jersey, and Elizabethport Piers, New Jersey, for the month of November, 1912, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

	Region.	To—	Number of cars.	Gross tonnage.
417	Wyoming	Port Johnston Piers	a 3,338	128,137.17
	Lehigh	do	78	3,268.11
	Schuylkill	do		
	Total		3,416	131,405.11
	Wyoming	Elizabethport Piers	261	10,162.01
	Lehigh	do	2,412	96,436.11
	Schuylkill	do	27	1,067.01
	Total		2,700	107,665.17

a Includes 119 cars from L. V. R. R. at Franklin Junc.

Answer to question No. 27—statement showing revenue from the operation of seagoing tugs and barges from Port Johnston, New Jersey, to New England points, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

(A)	Location of operation	Port Johnston, N. J., to New England ports	
(B)	Revenue from anthracite coal operations		$159,670.71
(C)	Revenue from other operations		
(D)	Total revenue		159,670.71
(E)	Operating expenses, anthracite coal operations		178,686.06
(F)	Operating expenses, other operations		
(G)	Total operating expenses		178,686.06
(H)	Net revenue or net loss		19,015.35

Answer to question No. 26—statement showing operation of har-
418 bor terminal transfers, location, revenue, operating expenses, etc., for the year ending June 30, 1912, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Location of operation	New York Harbor.
Revenue from anthracite coal operations	$90,117.65
Revenue from other operations	647,416.16
Total revenue	737,533.81
Operating expenses, anthracite coal operations	
Operating expenses, other operations	
Total operating expenses	a 872,904.43
Net revenue or *net loss*	135,370.62

a Impossible to separate the expenses between anthracite and other expenses.

Answer to question No. 39—statement showing for November, 1912, each colliery served by the Central Railroad Company of New Jersey, with the output and rated capacity, as follows: 419

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY. 420

The name of colliery or washery.	The name of the person or company which shipped all or the greater part of the coal produced.	The distance in miles from concentrating point of each colliery or washery.	The output.	Rated.
Wyoming region:				
Hollenback	Lehigh & Wilkes-Barre Coal Company.	7.7	25,959.16	27,959.16 R S
S. Wilkes-Barre	do	6.2	25,911.04	39,411.04 R S T
Stanton	do	5.8	54,495.04	59,687.04 R S
Sugar Notch	do	5.8	30,437.11	33,105.11 R S
Empire Washery.	do	6.2	10,839.03	13,419.03 R S U
Lance	do	8.5	34,606.15	37,489.15 R S
Nottingham	do	9.9	59,086.19	64,010.19 R S
Plymouth	do	9.0	19,788.13	21,436.13 R S
Maxwell	do	5.0	49,830.13	53,982.13 R S
Wanamie	do	11.6	41,043.00	44,283.00 R S
Buttonwood	do	7.4	27,146.01	29,408.01 R S
Lee or Melville	do	19.2	8,343.18	9,039.18 R S
Do	West End Coal Co	19.2	17,022.09	18,440.09 R S W
Red Ash	Lehigh & Wilkes-Barre Coal Company.	7.0	16,076.19	17,414.19 R S
Do	Red Ash Coal Company	7.0	1,275.04	2,255.04 R S
Hadleigh	Pittston Coal Mining Co	6.7	38.06	2,640.00 V
Alden	Whitney and Kemmerer	11.6	23,349.12	25,293.12 R S
Ridgewood	do	13.5	1,020.11	1,114.11 R S W
Lehigh region:				
Upper Lehigh	Upper Lehigh Coal Company	32.6	17,176.15	18,606.15 R S
Sandy Run	Whitney and Kemmerer	31.0	9,420.09	10,204.09 R S
Honey Brook	Lehigh & Wilkes-Barre Coal Company.	30.9	63,049.01	68,303.01 R S
Beaver Brook	Weston, Dodson & Co. (Inc.)	31.9	17,847.01	19,333.01 R S W
Coleraine	Estate of A. S. VanWickle	31.5	3,453.13	3,741.13 R S W
Hauto [a]	Lehigh Coal & Navigation Company.	8.9	163,997.09	170,557.09 S W
Nesquehoning	do	5.4	72,079.02	74,962.02 S
Schuylkill region:				
Mary D	Mary D Coal Co	21.2	12,853.17	13,367.17 S W

R Idle November 1st, account "All Saints Day."
S Idle November 28th, account "Thanksgiving Day."
T Idle November 2nd to 9th, both inclusive, account "Strike."
U Idle November 2nd to 5th, both inclusive, no orders for small-sizes.
V Idle all of November, account building a new breaker.
W Ship part of their output over other roads.
[a] The following collieries and washeries of the Lehigh Coal and Navigation Company deliver their output with their own power at Hauto, to wit: Collieries Nos. 5, 6, 8, 9, 10, 11, and 14. Washeries Nos. 12, 15, and Hauto.

421 Answer to question No. 30—statement showing tonnage and revenue from anthracite coal and from other freight, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

ANTHRACITE COAL.

Year.	Tons.	Ton-miles.	Revenue.
1880 a			
1890 b	7,463,529	654,865,379	6,725,695.96
1900 b	6,252,628	675,926,106	5,959,623.14
1905 c	8,007,406	980,136,321	7,931,739.33
1910 c	9,255,913	1,028,474,558	8,089,545.53
1912 c	9,574,532	1,014,926,361	8,188,584.45

OTHER FREIGHT.

1880 a			
1890 b	6,401,801	342,040,924	3,955,710.46
1900 b	10,004,193	598,128,461	5,913,859.23
1905 c	14,836,023	883,557,866	7,670,406.92
1910 c	20,265,477	1,124,985,053	10,334,443.84
1912 c	21,613,842	1,195,373,396	10,850,838.86

ALL FREIGHT.

1880 a			
1890 b	13,865,330	996,906,303	10,681,406.42
1900 b	16,256,821	1,274,054,567	11,873,482.39
1905 c	22,843,429	1,863,694,187	15,602,146.25
1910 c	29,521,390	2,153,459,611	18,423,989.30
1912 c	31,188,374	2,210,299,757	19,039,423.34

422 a Impossible to furnish the information called for.
b For years ended December 31.
c For years ended June 30.

Answer to question No. 34—statement showing shipments of coal for the month of November, 1912, segregated by shippers and sizes, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

	The Lehigh and Wilkes-Barre Coal Company.	The Lehigh Coal and Navigation Company.	All other shippers.		Total.
	A.	B.	K.a	K.b	
COMMERCIAL COAL.					
Prepared	295,395.17	94,602.09	52,261.18	48,089.12	490,349.16
Pea	41,948.07	32,451.12	8,332.08	1,205.04	83,937.11
Smaller than pea	63,509.00	109,022.10	42,863.11	30,867.00	246,262.01
	400,853.04	236,076.11	103,457.17	80,161.16	820,549.08
SUPPLY COAL.					
Prepared	22,996.09				22,996.09
Pea	7,609.05				7,609.05
Smaller than pea	35,175.19				35,175.19
	65,781.13				65,781.13

a All other shippers on line of respondent.
b Received from connecting carriers, but can not say whether tonnage was shipped by companies named in "C" to "J," inclusive.

Answer to question No. 37B—statement of allowances in certain 423
places and to certain shippers, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

There has been no adjustment of freight charges to the 60 per cent or the 65 per cent contracts referred to in the question. This respondent had no such contracts in effect during the period named, nor any part of it.

This company's records will not enable it to answer this portion of question No. 37 for the period prior to 1902.

Between the years 1902 and 1910, inclusive, respondent allowed the Lehigh Coal and Navigation Company $0.10.8 on prepared sizes and $0.09 on pea size and smaller, as a shipping allowance at the respondent's Elizabethport docks, where, during that period, the Lehigh Coal and Navigation Company performed the service of unloading its own coal from cars to ships' bottoms, a service covered by the rate. At the beginning of 1911 respondent assumed the performance of this work of unloading coal from cars into ships' bottoms, and the payment to the Lehigh Coal and Navigation Company for all shipping charges then ceased.

During 1904, 1905, and 1906 (up to and inclusive of August 31st of the last-named year) the following allowances were made to the Lehigh Coal and Navigation Company, to wit: In the year 1904 an allowance of $0.06.6 on coal originating at Hauto, Pennsylvania, and $0.08.6 on coal originating at Nesquehoning, Pennsylvania, was 424
allowed to the Lehigh Coal and Navigation Company on buck and culm when forwarded from Elizabethport by boat to Brooklyn Heights Railroad Company, Peter Cooper Glue Company, F. E. Howard, Brooklyn Union Gas Company, E. W. Bliss Company, Ginna and Company, Clark Estate, Standard Gas Company, and Thomas F. Quinland.

In 1905 these allowances were restricted to No. 1 buck and the following names were added to the list given above as consignees, to wit: Peoples' Line, Gardner Pattison, and New York and South Brooklyn Ferry Company. On Ap 1st, 1905, the Brooklyn Heights Railroad Company was taken out of this list and given a special allowance for loading and picking up, which amounted to $0.20.3 on No. 1 buck and $0.11.7 on No. 2 buck coming from Hauto and Nesquehoning.

In 1906 the name of the Metropolitan Street Railway Company was added to the above list, to whom allowances of $0.06.6 and $0.08.6 were made. Otherwise the same allowances were continued down to and including August 31st, 1906, when all these allowances were discontinued.

Under an agreement between the receivers of this respondent and the North River Coal and Wharf Company, made March 18th, 1887, the latter erected a pier on respondent's lands at Jersey City, which pier came to be known locally as Port Liberty. This agreement was superseded on September 1st, 1905, by an agreement between respon- 425
dent company and the North River Coal and Wharf Company, which agreement is filed with the commission in response to question No. 16, ante. (See also the answer to question No. 31, ante.) Under that agreement the North River Coal and Wharf Company has acted as respondent's servant and agent in the delivery of coal at Port Liberty

dock under respondent's tariffs. The North River Coal and Wharf Company owns and operates engines and unloads the coal, and since 1902 the respondent has paid that company $0.15 per ton for this service. As will be noted by reference to the agreement, the lessee pays a rental of $6,000.00 per annum for the use of respondent's land upon which the North River Coal and Wharf Company's pier stands. Respondent does not deem this allowance to be an allowance out of the rate, because respondent's tariff rates entitle a shipper to have his coal put in vessel bottom by respondent at the respondent's sole cost. The Port Liberty pier thus leased is opened to all shippers and receivers of coal in New York Harbor on terms of equality, but to the extent that the North River Coal and Wharf Company may itself be a receiver of coal, while that company would pay the full tariff rate and perform the service of loading its own coal into a vessel, it would receive as compensation for so doing the sum of $0.15 per ton.

426 A somewhat similar arrangement to the foregoing has obtained at what is known as the Communipaw Pier, located at respondent's Jersey City terminal. From 1902 to July 1st, 1910, the Communipaw Coal Company was the lessee of this Communipaw Pier. From July 1st, 1910, to date Burns Brothers have been the lessees of this pier, having succeeded to the interests of the Communipaw Coal Company. Reference is made to the last-named agreement, which is filed in response to question No. 16, ante, and also to the response to question No. 31, ante. At this pier respondent performs the engine service instead of the consignees doing so, as was the case at the Port Liberty Pier operated by the North River Coal and Wharf Company. From 1902 to date respondent has collected the full tariff rates from the consignees at the Communipaw Pier, but has paid to the consignees (The Communipaw Coal Company down to July 1st, 1910, and Burns Brothers since that date) $0.15 per ton on prepared sizes of anthracite coal and $0.12 per ton on the steam sizes in consideration of the consignees relieving the respondent of its service in delivering from cars to bottoms as covered by respondent's tariffs. Burns Brothers, like the North River Coal & Wharf Company, pay a rental for this pier, as will be noted from a scrutiny of the contract referred to above.

427 Counsel for Government offered in evidence answer by the Lehigh and Wilkes-Barre Coal Company to question 54 in re investigation before Interstate Commerce Commission, Docket 4914—statement showing the output and location of all collieries owned and operated by the Lehigh and Wilkes-Barre Coal Company, as follows:

Answer to question No. 54. Collieries and washeries operated November, 1912, by Lehigh & Wilkes-Barre Coal Co. 428

Name and location.	Output, gross tons.	Average cost producing coal.
(A)	(B)	(C) (D)
Hollenback Colliery No. 2, Wilkes-Barre, Pa.	31,609.00	$1.972
8, Wilkes-Barre Colliery No. 5, Wilkes-Barre, Pa.	34,244.00	2.04
Stanton Colliery No. 7, Wilkes-Barre, Pa.	56,325.19	1.727
Sugar Notch Colliery No. 9, Sugar Notch, Pa.	31,001.14	1.735
Lance Colliery No. 11, Plymouth, Pa.	34,968.08	1.614
Nottingham Colliery No. 15, Plymouth, Pa.	59,863.03	1.491
Wanamie Colliery No. 18, Wanamie, Pa.	41,466.12	1.566
Maxwell Colliery No. 20, Ashley, Pa.	51,095.10	1.453
Audenried Colliery No. 4, Audenried, Pa.	36,642.14	1.873
Honey Brook Colliery No. 5, Audenried, Pa.	27,128.03	1.602
Empire Washery, Wilkes-Barre Township, Pa.	10,956.03	0.267

To correctly show cost of conducting the business there must be added approximately an average of 18c. per ton to meet taxes, .122c. per ton sinking-fund charges, and 18c. per ton interest on debt. The figures do not include any items to cover such general expenses as accounting department, sales department, legal expenses, insurance, or similar overhead charges, which amount to .036c. per ton.

(Adjourned until Monday, February 16, 1914, at 11 o'clock a. m.) 429

Met pursuant to adjournment at 2 Rector Street, New York City, Monday, February 16, 1914, at eleven o'clock a. m. 430

Present: The examiner; Messrs. Coudert, Kingsbury, and Gordon, special assistants to the Attorney General, for the Government; Messrs. Heebner, Reynolds, Drinker, Beattie, DeForest, and Turner, for defendants.

RICHARD T. DAVIES, having been duly sworn, was examined as follows:

By Mr. COUDERT:

Q. Will you give your full name and your position?—A. Richard T. Davies, general coal agent of the Lehigh Coal & Navigation Company.

Q. How long have you been associated with the company, and in what position?—A. The first of January, 1878, as sort of clerk and bookkeeper in New York; a year after made agent in New York; I remained in that position until about the first of November, 1905, when I was called to Philadelphia on account of the serious illness of my predecessor, who soon after died, and I succeeded to his position about December 1st, 1905, and have been there ever since.

Q. You thus have a very general knowledge of the affairs of the Lehigh Coal & Navigation Company?—A. More general since the first of December, 1905; prior to that only the New York end of the business.

Q. Will you describe to us in your own way, and for the purposes of record, with reference to the map here, the various routes over which the coal from your mines proceeds?—A. Our coal originates in Hauto and about Hauto, in that region.

Q. All about Hauto?—A. Yes.

Q. Your acreage is, generally speaking, what?—A. I do not recall that. We move by the Reading Lines, over to Tamaqua, and we follow out through all this region here [indicating].

Q. You go down over the Reading lines south to Port Clinton, Reading, etc.?—A. All the way to Philadelphia; all these local points in here [indicating].

Q. Roughly speaking, what proportion of your coal goes from Hauto over the Panther Creek Railroad and south through Port Clinton to Philadelphia?—A. I should have to formulate a statement for that, which I could do.

432 Q. You will give me the proportions?—A. I will be very glad to give you all the proportions of all these routes.

Q. It is a considerable proportion that goes that way?—A. There is quite a tonnage that goes that way.

Q. That is one of the principal routes which your coal takes?—A. Yes.

Q. It goes to Philadelphia, and from there do you know where it goes?—A. It is distributed either in the harbor by water, or delivered on the sidings of the various dealers, local dealers.

Q. Where is it consigned to? Local dealers at Philadelphia?—A. Some of it, yes; that proportion which goes to Philadelphia is consigned to the local dealers.

Q. To the local dealers there?—A. Yes, excepting a portion which is consigned to Port Richmond docks for reloading into boats and distribution on the water.

Q. Will you also give me a statement, if you can, of how large a proportion of the coal shipped to Philadelphia is transshipped and goes over the water routes you have referred to?—A. Yes, I can do that very readily.

Q. What other routes does your coal take?—A. Starting at Hauto, down to Mauch Chunk.

Q. On what line does it go from Hauto to Mauch Chunk?—A. The Central Railroad Lines.

Q. Is that the Panther Creek Line?—A. No, sir; the Panther Creek Line runs in this direction [indicating].

433 Q. So the portion of the coal shipments to which you are now addressing yourself originates at Hauto?

A. At Hauto.

Q. Go over the lines of the Central Railroad of New Jersey to Mauch Chunk and from there what is their ultimate destination?

A. Local points on the Central Railroad of New Jersey to Phillipsburg and beyond all the way to tide.

Q. Tide at New York?

A. At New York. Then at Phillipsburg we take the Pennsylvania lines.

Q. Therefore you say that a great proportion of your shipment, the exact amount of which you will give me in a memorandum later, originating at Hauto goes through Mauch Chunk, through Easton, Phillipsburg, through Bound Brook, and to New York tidewater wholly over the lines of the Central Railroad of New Jersey?

A. Yes, sir.

Q. Now, in addition to that second class of shipment going to New York tidewater, what is the next important class of shipments and its ultimate destination?

A. Of the all-rail coal, it is coal leaving the lines of the Central Railroad of New Jersey at Phillipsburg and following the Pennsylvania Railroad to Philadelphia.

Q. Following the Pennsylvania Railroad to Philadelphia?

A. Philadelphia and intervening points.

434 Q. So that a portion of your coal goes to Philadelphia via the Reading Railway alone and a portion of your coal goes to Philadelphia via the Central Railroad, connecting at Easton with the Pennsylvania Railroad?

A. At Phillipsburg; yes.

Q. With the Pennsylvania Railroad?

A. Yes.

Q. That covers all the coal that goes to Philadelphia from your mines?

A. That covers all, excepting another class of tonnage.

Q. Explain that.

A. That goes from Hauto to Coalport, where our canal shipping docks are, and follows the line of the canal locally all the way down.

Q. Will you kindly trace that line of canal, naming the principal points the canal goes through?

A. It follows the Lehigh River to Easton and from there it follows, substantially follows, the Delaware River all the way down to Bristol.

Q. And from Bristol?

A. It comes out into the river and comes to Philadelphia.

Q. And you will be good enough to give me a memorandum, showing what proportion of coal from your mines goes by that water route from Hauto to Philadelphia?

A. Yes, sir.

435 Q. In that memorandum will you give me the names of the canals, or can you do that now?

A. The Lehigh Canal is the division running from Coalport to Easton and the Delaware Division Canal from there on to Bristol.

Q. Then you have described the various routes of the coal to Philadelphia and you have described one route, namely, the route via the Central Railroad to New York tidewater. Now, are there any routes over which your coal goes to New York tidewater other than the one described?

A. Yes; a portion of the tonnage leaving Tamaqua——

Q. Via the Panther Creek Railroad?

A. Yes; follows the L. & N. E. lines, the Lehigh & New England Road, to Hainesburg Junction, and is there diverted to the New York, Susquehanna & Western tracks, and reaches Edgewater, which is on the Hudson River near New York.

Q. And you will give me the proportion of the coal that goes in that way to Edgewater?

A. Exactly so.

Q. Is there any other route by which any of your coal reaches New York?

A. There are no other routes over which we have shipped to New York.

Q. You have shipped no coal to New York over the Reading Road?

A. No; at no time that I can remember.

Q. None of your coal goes to Port Reading?

A. No.

436 Q. If you should find any additional fact in regard to that, or find that you were mistaken, you will let me have a memorandum of it?

A. I will do so.

Q. Now, having stated all the routes by which your coal goes to New York and Philadelphia, can you state to what other points of ultimate destination your coal goes?

A. There is the coal for New England.

Q. Describe the routing of the coal to the New England States.

A. It follows from Tamaqua the lines of the Lehigh & New England and its connections all the way over to Campbell Hall and on from there by the Central of New England into all parts of the New England States.

Q. Have you any other route by which coal travels to New England than the route over the Lehigh & New England Railroad?

A. Yes; there is a connection at Easton with the Central Railroad Lines, whereby coal can reach the New England States.

Q. Where does it leave the Central Lines, that coal?

A. At Easton.

Q. What lines does it then take for New England? When your coal leaves Easton on its way to its ultimate destination for New

England, what lines other than the Lehigh & New England does it take?

A. The Lehigh & Hudson River Railway.

Q. And it goes over the Lehigh & Hudson to Maybrook?

A. Yes.

Q. And then connects with what? The Central of New England? 437

A. The Central of New England, and goes on as before.

Q. So that you have consigned coal to New England both over the Lehigh & New England Railroad and the Lehigh & Hudson River Railway?

A. Yes.

Q. In proportions the amount of which you will furnish to us in a memorandum?

A. Yes, sir.

Q. I will ask you whether there is a junction point at Bethlehem?

A. Yes.

Q. Where does the coal go from that junction?

A. A portion of the coal leaves the lines of the Central Railroad of New Jersey at Bethlehem and connects with the Lehigh & New England and proceeds to its ultimate destination in New England.

Q. The proportions to be furnished later. In addition to this coal that goes to New York tidewater, Philadelphia tidewater and points in New England, does any of your coal go to other points, in the West, for instance, and by other routes?

A. Yes.

Q. Now, if you will kindly explain those routes.

A. That coal starts at Hauto.

Q. All your coal originates at Hauto; is that so?

A. In the mines in the Panther Creek Valley.

Q. Where does your coal originate? At what shipping point? 438

A. In the Panther Creek Valley.

Q. Either at Hauto or Tamaqua?

A. And intervening points.

Q. It originates at intervening points between Hauto and Tamaqua; is that right?

A. Yes.

Q. Does any of your coal, other than the coal as to which you have already testified, go to markets other than the tidewaters of Philadelphia and New York and the points in New England?

A. Yes; via the Lehigh & New England and Lehigh Valley tracks, connection with which is shown here at Lizard Creek Junction, for points in the West.

Q. That goes where?

A. Points in the West.

Q. Over the Lehigh Valley?

A. Yes.

Q. And you will furnish me the proportion of coal that goes in that way?

A. Yes.

Q. Are there any other routes than those you have already traced on the map, over which your coal goes?

A. I do not recall, but in that statement I will give you the entire distribution of the coal.

Q. And you will give me that for some typical year, say 1911?

439 A. That is not a typical year. I have been describing things that would not appear in the 1911 statement. 1913 would be a typical year.

Q. Then will you give me a statement for 1911 and 1913 as well?

A. Yes, sir.

Mr. DRINKER. Mr. Davies is not an operating man and, if it is your pleasure, I would like to go over his testimony and get up his exhibits and then cross-examine him at a later time in reference to it, so as to straighten out any inaccuracies.

Mr. COUDERT. Suit yourself. We might do that at the next hearing, if that will suit you.

By Mr. COUDERT:

Q. Would it be physically possible to route your coal to New England over the Central Railroad of New Jersey or the Philadelphia & Reading Railway?

A. Not over the Reading roads and I think not entirely over the Central now. There used to be a method whereby coal was floated to Port Morris from Communipaw, but that is a thing of the past, I believe.

Q. Could any of your coal go over the Reading or Central Railroads to tidewater and be transported by water to New England?

A. There is a considerable portion goes to tide for such transportation.

440 Q. And a great deal of that coal that so goes to tide is transported to New England in that way?

A. Yes.

Q. Now you have testified that some of your coal goes to New England over the Lehigh and New England Railroad, and that other consignments of your coal go to New England over the Lehigh & Hudson Railway. It is quite possible, is it not, for the coal to go over either of those routes equally?

A. Yes; I should say so.

Q. And in choosing the one or the other, what is the propelling motive, if you know?

A. There are several. One of them is the fact that the Lehigh & New England Road is in position, by their having plenty of coal equipment, to give us cars of a type that are difficult to get from other companies—low-sided cars that the other companies are abandoning. That has helped us very greatly, both because of restrictions as to weights over bridges and the weights on sidings and all that, put upon us by the New Haven Road.

Q. They make a specialty, then, of having a special car, in order to tempt your coal traffic?

A. I will not say that, but they have it. I do not know what they make a specialty of.

Q. That is the main reason for your preferring to route in that way rather than by the Lehigh & Hudson?

A. It helps us greatly in the distribution of our tonnage.

Q. The greater part of your tonnage, the major part, passes over 441
the Central Railroad of New Jersey, does it not?

A. That statement that I give you will show all those details.

Q. Are you familiar with the history of the Panther Creek Road?

A. Not at all.

Mr. Coudert suspended his examination to ask Mr. Drinker, counsel for the Lehigh Coal & Navigation Company, for a brief history of the so-called Panther Creek Railroad.

Mr. Drinker said that he would furnish such a statement; and subsequently stated to the examiner that he would produce it the next hearing.

442

By Mr. COUDERT:

Q. You have given one reason for preferring to send coal on the Lehigh & New England Road, rather than on the Lehigh & Hudson. Are there any other reasons, other than the car facilities of the former road?

A. None that specially occur to me. That is a rather broad question; I would like to think it over and answer it.

Q. On those railroads are the rates the same?

A. Essentially the same, yes.

Q. I understand that the tariffs on both are similar?

A. Yes; you have to have equal tariffs or lose your market.

Q. So that the features of the one or the other which cause you to discriminate are features of convenience, rather than features of rate and finance?

A. Yes.

Q. What induces the sending of coal to tidewater over the Central or the Reading, the one rather than the other?

A. That is on account of some arrangement with which I am not familiar.

Q. You are simply told to ship over one or the other, and you follow those instructions, by reason of some arrangement between the roads as to which you have no familiarity?

A. Yes.

Q. And you get those instructions from the president of your company?

A. Yes.

443 Q. Do you happen to have any information in regard to leases of land of the Lehigh Coal & Navigation Company to tenant operators?

A. No, not at all.

Q. That information is not in your possession?

A. Not within my jurisdiction at all.

Q. What are your functions, exactly, as freight agent?

A. The receiving of our product and finding a market for it, generally distributing it wherever I can; maintaining the sales department, with representatives at different points to solicit business and dispose of our tonnage.

Q. Does the Lehigh Coal & Navigation Company purchase any coal from others?

A. That is an operation that I have nothing to do with.

Q. You have no familiarity with that?

A. No.

Q. On the Lehigh & New England and on the Lehigh & Hudson River Railroads do you have through rates?

A. Yes; the Lehigh & Hudson rates are all in connection with Central Railroad tariffs, tariffs issued by the Central Railroad.

Q. The Lehigh & New England with their own tariffs?

A. With their own tariffs, as well as some of those going via Bethlehem Junction are in conjunction with the Central Railroad.

Q. Do you know whether an allowance is given to the Lehigh Coal & Navigation Company on coal originating at Hauto and Nesque-
444 honing and forwarded to certain named consumers, but not to others?

A. I have no knowledge of those things. I think they are matters of the accounting department that could be better answered there.

Q. You yourself do not know anything about that?

A. No.

Q. You do not know of any particular consumers to whom coal is forwarded and from whom an allowance is received for the forwarding of that coal?

A. No.

Q. Do you know what is meant by the Penn Haven basis of rates, and can you give us a lucid explanation of that?

A. I wish I could.

Q. You are not able to do that?

A. No, sir.

Q. Then you are going to furnish me all the figures that I have requested in the examination, showing exactly what proportions of your coal from your mines go over all the routes testified to by you?

A. Very good.

At Mr. Coudert's request Mr. Drinker made the following statement regarding the Penn Haven basis of rates as affecting the Lehigh Coal & Navigation Company:

Mr. DRINKER. The Lehigh Coal & Navigation Company operated 445
its own railroad from 1867 until 1871. That railroad was built in pursuance of the charter power of the navigation company to build a railroad and to substitute it for its slackwater navigation, the slackwater navigation having been authorized by the legislature for the principal and express purpose of enabling the navigation company to get its coal to market from its mines. The navigation company, as started originally, was made out of two companies; one was a coal company and the other was a navigation company. They were originally joint stock associations, not incorporated. In 1821 the two companies were put together in order to get more capital, and in 1822 they were incorporated into the Lehigh Coal & Navigation Company, and they were authorized to mine the coal and then to transport it down the canal. In 1837 the navigation company was authorized, by amendment to its charter, to construct a railroad from Wilkes-Barre over the mountain, to connect with its slackwater navigation at White Haven. In 1862 there was a very bad flood on the river and it washed out part of the canal, up at the upper part, and in 1863 the company was authorized by an amendment to its charter to construct a railroad from White Haven to Mauch Chunk and to abandon a part of the canal; and in 1864 it was authorized to construct the other half of the railroad, making a continuous line of railroad from Wilkes-
Barre down to Easton or Phillipsburg across the river. In building 446
and operating these railroads the company was given the powers under the general railroad act of 1849. That is how the so-called Lehigh & Susquehanna Railroad happened to be built, to supplement the canal. Then they operated the road from 1867 to 1871, and at that time they were in considerable financial difficulties, and they entered into this lease with the Central Railroad of New Jersey; but, as a moving consideration of the lease, they wanted to make sure that they would get favorable rates. They would not have given up their railroad if they had not been sure of favorable rates over the road that was going to take their coal, because they were giving up the means of getting their coal to market by making this lease. At that time, and prior thereto, the railroad up from Penn Haven Junction to Hazleton, where a great many mines are and much coal, was the Beaver Meadow Railroad, which was subsequently absorbed by the Lehigh Valley. But there was then a distinct rate, which was known as a

lateral, from Hazleton down as far as Penn Haven. That rate varied from 34 or 35 cents up to 42 cents. Penn Haven Junction was then a basing point of making rates on the Lehigh River. The rate from Hazleton down to Penn Haven was a distinct rate. Then there was
447 another distinct rate from Penn Haven to Mauch Chunk, and another one from Mauch Chunk down to the Delaware River, and another distinct rate via the Central Railroad of New Jersey from there to tidewater. The Central Railroad, or the Lehigh Navigation Railroad, did not run up as far as Hazleton. That tenth clause of the lease is worded so that one viewing it from the conditions as they now exist could not perhaps understand what it means, but in view of the circumstances existing at the time it is clearer. What it says is:

The parties of the second part further covenant and agree that on coal delivered for transportation by the parties of the first part on sidings at the northern end of the Nesquehoning tunnel, the rates of transportation shall not exceed the rates charged at the same time from Penn Haven to the same points on coal from the Lehigh region, either by the parties of the second part or by the Lehigh Valley Railroad Company.

From Penn Haven to Mauch Chunk is eight miles, the same distance as from Hauto.

Now, bearing in mind the fact that the rate from Hazleton to Penn Haven Junction was a distinct rate, known as a lateral, it was the intention of the tenth clause that the navigation company should
448 get the same rate from Hauto as the rate from Penn Haven Junction; that is, that they should have the advantage of the Hazleton operators by the amount of that rate, which was called a lateral. Later that intention was carried on by the parties in fixing their rates from Hauto, so that the navigation company was given what was called a lateral, being the amount from Hazleton down to Penn Haven Junction. That is my understanding of the way the present condition arose. The intention of the tenth clause was that the rate from Hauto should be the same as the rate from Penn Haven; that is, that the navigation company should have the advantage which would be attributable to the rate from Hazleton down to Penn Haven. The present tariff says that the navigation company shall be allowed a lateral in accordance with the tenth clause of the lease, and that is what we have always contended the tenth clause meant, and that is what the Central Railroad of New Jersey has always accepted as the meaning of that clause.

Mr. COUDERT. I understand you to say that a shipper could not, from the tariff, tell what the rate would be, unless he understood these conditions?

Mr. DRINKER. He would have a reference which would put him on notice that there was a lateral there, and he could readily find out.

Mr. KINGSBURY. Then he would have to make further inquiries at another source? 449

Mr. DRINKER. There are no figures in the tariff. Penn Haven and Hauto are equally distant from Mauch Chunk, eight miles. In 1871 the Hazleton operator paid the lateral of about 35 cents for having his coal hauled from Hazleton to Penn Haven. The navigation company was itself to perform this preliminary service from its mines in the Panther Creek Valley through the tunnel, then near completion to Hauto. The tenth clause provided that the rates from Penn Haven and Hauto should be the same, so that the Hazleton operator would have to pay the 35-cent lateral for the service in delivering his coal to the trunk line, being the equivalent of the service performed by the navigation company with its own equipment over its Panther Creek Railroad and through the tunnel. After Penn Haven ceased to be a basing point, the underlying intention of this covenant was carried out by allowing the navigation company the lateral which the Hazleton operator thereafter paid as a part of the through rate.

Cross-examination by Mr. REYNOLDS: 450

Q. You spoke about the L. & N. E. furnishing low-side cars to the Lehigh Coal & Navigation Company. Why is it that you need low-side cars?

A. Because of the restrictions at the delivery point and on the lines of the delivering roads. The New York, New Haven & Hartford have a long and very extensive schedule of points to which 100,000-pound cars can not go, and the bridges will not carry them and the sheds will not hold them, and many of the sidings are not strong enough to hold them, so they restrict us, and the other roads are rapidly dismantling those small cars. The first equipment that the L. & N. E. built was of that type, that smaller type of car, which is very desirable for that kind of traffic. It does not apply, of course, to everything.

Q. The tendency altogether on the other lines is to build the large-capacity cars?

A. Large-capacity cars; but the small dealer is still in existence and has got to be taken care of in some way, and it is done by that means.

Q. Do you remember that the distance from Hauto to Elizabethport via the Jersey Central is 116 miles?

A. The distance by the Central Railroad to Elizabethport is 117.9.

Q. Do you know the distance from Hauto to Tamaqua?

A. Not exactly, I do not; ten or twelve miles, thirteen, somewhere along there. 451

By Mr. COUDERT:

Q. From Tamaqua to Tamanend is about how far?

A. I do not know those local distances.

By Mr. REYNOLDS:

Q. From Tamaqua to Philadelphia is 98.1 miles, is it not?

A. Yes, that is substantially it.

Q. And from Philadelphia to Port Reading is practically 90 miles?

A. We always use those figures.

By Mr. DRINKER:

Q. Do you know the distances from Penn Haven Junction and from Hauto, respectively, to Mauch Chunk?

A. I have not those.

Q. They are each practically the same, are they not, eight miles?

A. They are about practically the same.

Redirect examination by Mr. COUDERT:

Q. The rates to tidewater are the same, are they not, on the different routes that you mention?

A. The rate to Undercliff is $1.60 on prepared coal and to Elizabethport $1.55. It is the natural difference between the upper and lower ports that has always existed and makes some difference in prices.

452 Q. But there are no other differences on the other routes?

A. No.

Q. That is the difference between uptown and downtown?

A. Yes.

By Mr. REYNOLDS:

Q. Your answer is confined only to the three railroads you have named, is it not?

Mr. COUDERT. On the roads he has named; I asked him that.

A. Yes. I only named two to tide, the Central Railroad, $1.55, and the Susquehanna & Western, in connection with the L. & N. E. to Undercliff, formerly Edgewater, $1.60 on prepared coals.

By Mr. COUDERT:

Q. That five cents is simply to offset the difference in water freight from one place with the other?

A. Yes.

Q. So that the result is the same?

A. Yes. That difference has always existed, as long as I remember.

Recross-examination by Mr. DRINKER:

Q. The Susquehanna & Western does not operate on that route; the Lehigh & New England operates all the way down, with a trackage right over the Susquehanna. Is not that so?

A. It is just the terminal road that brings the coal in.

Q. Does that road, the Susquehanna & Western, haul the coal, or 453
does the Lehigh & New England have a trackage right over it?

A. I am not familiar enough with the operation end to tell that.

Q. Do you know whether there is a Lehigh & New England through tariff to tide?

A. I do not recall having seen one. They are matters of record.

T. B. KOONS, having been duly sworn, was examined as follows:

By Mr. COUDERT:

Q. What is your position in connection with the Central Railroad of New Jersey?

A. Vice president and traffic manager now.

Q. And you have been with the Central Railroad for how long?

A. Since November, 1880.

Q. Therefore you are very familiar with the anthracite traffic over that road?

A. Yes.

Q. Will you kindly explain, with reference to that map and naming the various places, how the coal originating in the coal regions tapped by your line goes to the various ultimate points of destination and over what railroads?

A. Commencing in the Wyoming region, from Mocanaqua to Wilkes-Barre, including the Plymouth district, it moves down over the Central Railroad of New Jersey, by way of Mauch Chunk to 454
Easton, bound for New England via the Lehigh & Hudson, Central of New England, and New York, New Haven & Hartford.

Q. That is your first route to which you testify?

A. Yes.

Q. That coal goes to New England?

A. Yes, sir.

Q. Over what other route does coal go to New England?

A. Via Bethlehem Junction.

Q. Down over the same road?

A. Over the same road.

Q. The Lehigh & Susquehanna?

A. The Lehigh & Susquehanna Division.

Q. To what junction?

A. Bethlehem Junction; Lehigh & New England Railroad to Campbell Hall; Central of New England; New York, New Haven & Hartford Railway.

Q. That is the second method of routing your coal to New England?

A. Yes.

Q. Now is there any other method by which you send coal to New England?

A. Yes, sir; by the same road by way of Wilkes-Barre, the Lehigh & Susquehanna Division, Phillipsburg, New Jersey main line to Jersey City; thence over the West Shore Railroad to Albany, over the same road via Rotterdam Junction, Boston & Maine Railroad, and in connection with the Rutland Railroad.

455 Q. Those are the three routes, and the only three routes, by which your coal is sent to New England?

A. All rail.

Q. By rail?

A. Yes, sir.

Q. Now, is there a further route, a water route, and if so, kindly describe it?

A. Yes, sir; from Wilkes-Barre over the L. & S. division to Phillipsburg; thence to Elizabethport, Port Johnston, Port Liberty, Jersey City.

Q. And from Jersey City?

A. By water.

Q. By water all the way to New England?

A. To New England; coastwise points as far as Maine.

Q. Those three railroad routes, and the fourth route, which you have termed the water route, are the only routes by which your coal goes to New England, or is there another way in which it may go?

A. No, sir.

Q. Is there any other way, to your knowledge, in which it could go to New England?

A. There are possibilities of other routes, but I have no knowledge of their use.

Q. Those are the only ones that are used?

A. Yes.

Q. How does your coal go to tidewater, both Philadelphia and New York, by what various routes?

456 A. From the Wyoming region to Philadelphia, down over the L. & S. division to Phillipsburg, New Jersey; thence over the Pennsylvania Railroad to Philadelphia, and Baltimore, Washington, and all south New Jersey. Also from the same territory to Allentown; thence over the Philadelphia & Reading, via Bethlehem Junction; thence over the Philadelphia & Reading to certain P. & R. territory.

Q. To certain P. & R. territory?

A. Yes.

Q. That is, intervening territory between Philadelphia and Reading?

A. Yes; right.

Q. In addition to those two routes are there any other routes by which your coal goes to tidewater? Is there any water route?

A. By canal from Coalport.

Q. Will you describe that route?

A. From the Wyoming region, from Wilkes-Barre over the L. & S. division to Coalport, near Mauch Chunk; thence by canal to Easton or Phillipsburg; thence over the Delaware Division Canal to Bristol.

Q. And from Bristol?

A. Thence by the Delaware River.

Q. By the Delaware River to Philadelphia and points south?

A. Yes, sir.

Q. Now, in addition to the four New England and the three tide- 457
water routes, does your coal proceed to any ultimate destinations elsewhere, by any other routes?

A. From the Wyoming district near Nanticoke it also moves via the Pennsylvania Railroad all over the Pennsylvania Railroad system, including Philadelphia, Baltimore, Washington, points in the South, and points in the West.

Q. So that it goes by the Pennsylvania Railroad from where?

A. Nanticoke.

Q. Over what road?

A. The Pennsylvania Railroad.

Q. Does it originate on the Pennsylvania? Does some of your coal originate on the Pennsylvania?

A. No; originates on the Central Railroad of New Jersey.

Q. It goes how far on the Central Railroad? Where does it connect with the Pennsylvania?

A. At Nanticoke.

Q. That is the junction?

A. Yes, sir.

Q. Of that portion of the Central Railroad and the Pennsylvania?

A. Yes, sir.

Q. Then it stays on the Pennsylvania until it reaches Philadelphia and may go to points south?

A. Yes, sir; and points west.

Q. Does your coal go over any other routes to the West? 458

A. No. sir.

Q. Does any of your coal go through Newberry Junction?

A. No, sir.

Q. Do you know why it is you do not send any coal out that way?

A. More recently we have had some inquiries, but generally speaking we have had no inquiries for westbound shippers on our road.

Q. So you do not make any western rates?

A. No, sir.

Q. These others you have mentioned are all through routes, and you have through rates for them?

A. Yes, sir.

Q. Those routes you have described are the only routes over which your coal goes to the various markets?

A. Yes, sir.

Q. That is only from the Wyoming region. How about the coal originating in other sections than the Wyoming section? I want the ultimate destination and routes of all your coal.

A. From the Audenried district, or known as the Lehigh district, over the Central Railroad by way of Tamanend, thence over the Central Railroad, the L. & S. division——

Q. Does any of that pass over the Panther Creek Railroad?

A. Not from the Audenried district. Thence over the L. & S. division of the Central Railroad to Easton; thence over the Lehigh
459 & Hudson, Central of New England, New Haven & Hartford Railroad. From the same region, by the same route via Bethlehem Junction, over the Lehigh & New England Railroad, Central of New England Railroad, New Haven & Hartford Railroad. From the same region, by the same route, over the L. & S. division to Phillipsburg; thence to Jersey City; thence over the West Shore Railroad, via Albany in connection with the Boston & Albany, via Rotterdam Junction in connection with the Boston & Maine Railroad.

Q. Does any of this coal from the Lehigh section going to New England go over the Lehigh & Hudson River Railway?

A. Yes, sir; from the same region?

Q. Yes; to New England.

A Yes, sir.

Q. Are there any other routes over which any coal originating on your line goes than those you have described?

A. No, sir.

Q. You have described them all fully, have you?

A. Yes, sir.

Q. Do you touch the Schuylkill field at all?

A. Only to the extent that we have one colliery from which we handle coal, and that is from the Mary D. colliery beyond Tamaqua.

Q. Do you handle any coal other than the coal from the collieries with which you have track connection?

460 A. Yes, sir.

Q. What other coal?

A. We handle from the Delaware & Hudson.

Q. That is, coal that is transshipped from the Delaware & Hudson?

A. Originating at points on the Delaware & Hudson, coming to us by way of Wilkes-Barre.

Q. Do you handle any coal originating on the Reading?

A. Yes, sir; by way of Allentown and via Bound Brook.

Q. Just show us that route, will you? Show us what connection you make there.

A. From the Reading district it comes by way of Reading Railroad to Reading, thence by Allentown, by way of Easton, L. & H. Railroad, Central of New England, and New York, New Haven & Hartford Railroad.

Q. Is there any advantage of that route over the apparently more direct one on this other line?

A. No; I am not sure that I have grasped your question, by "advantage."

Q. You say you handle a good deal of coal that passes over the Reading and connects with your road. Where?

A. At Allentown.

Q. And that coal goes to New England?

A. New England.

Q. Along the routes that you have already described?

A. Yes.

Q. Is there any particular reason for routing to New England over 461
the Lehigh & New England rather than over the Lehigh & Hudson Railway, or vice versa?

A. No.

Q. You can route the coal equally well over either of those roads?

A. The same.

Q. Will you tell me how close together are the junction points at Easton and Bethlehem Junction?

A. About twelve miles.

Q. And how close together are Burnside and Maybrook?

Judge BEATTIE. About two miles and a half.

Q. Can you tell me what is the reason for an allowance to the Navigation Company for coal originating at Hauto and Nesquehoning and destined to certain special persons?

A. It is by reason of the service that they perform from the Panther Creek region to Hauto and in conformity with the tenth clause of the lease.

Mr. REYNOLDS. You are misleading him with your question.

By Mr. COUDERT:

Q. Was there any allowance granted to the Navigation Company on coal originating at the points Hauto and Nesquehoning and destined to certain special persons?

A. During what period?

Q. During any period within your experience.

A. I think there were some allowances some years ago as to a few 462
of them.

Q. Do you know on what idea that was based or what was the cause of those allowances?

A. I can not answer that at this time.

Q. All you know is that allowances were made for that coal when it was sent to certain persons, rather than to other persons?

A. I believe that is the case.

Q. And you do not remember the dates?

A. No, sir.

Q. Have you yourself any information in regard to coal lands leased by the Wilkes-Barre Coal Company to others?

A. No.

Q. That is not within your jurisdiction?

A. That does not come within my jurisdiction at all.

Q. Does the railroad company itself lease coal yards?

A. To local dealers?

Q. To individuals.

A. Yes.

Q. Are there many such leases, do you know?

A. They are leased along the road; yes, sir.

Q. All along the road to certain individuals?

A. Yes, sir.

Q. Burns Bros. is one of them, I believe?

A. Yes, sir.

463 Q. You testified in regard to that before the Interstate Commerce Commission?

A. Yes, sir.

Q. Do the leases of other yards as to which you have spoken contain clauses similar to those?

Mr. REYNOLDS. I object. It is impossible to answer such a question as that. There are scores and scores of them, and the leases will speak for themselves. I will produce a copy of every lease, if you want it.

Mr. COUDERT. We want the fact, whatever it is, in the shortest possible compass.

By Mr. COUDERT:

Q. You are familiar with, and have testified pretty fully in regard to, the Burns lease?

A. Yes, sir.

Q. Do you know, of your own personal knowledge, whether some of these other leases have the same provisions for a special allowance?

A. I can not answer that.

Q. That you do not remember?

A. No, sir.

(The Burns lease referred to is already in evidence as Government Exhibit No. 45.)

Q. Do you know whether any or all of those leases contain a provision binding the lessee—that is, the person leasing the yard—to only

take into that yard coal coming over the line of the lessor, via the Jersey Central?

(Objected to by Mr. Reynolds.) 464

A. I could not answer that.

Q. Do you or do you not know of any such leases?

A. No, sir.

Q. So, as far as you know, they may or may not exist?

A. Yes.

Q. You do not know of any practice in that regard?

A. No, sir.

By Mr. REYNOLDS:

Q. You do not make the leases generally, do you?

A. No, sir.

By Mr. COUDERT:

Q. I show you a copy of a letter dated September 24, 1907, written by Mr. William T. Grier, apparently the coal freight agent of the Lehigh Valley Railroad, to Mr. T. N. Jarvis, the second vice president, and I ask you to read it. It contains an account of a meeting held between various individuals, of whom you were said to be one, and I ask you whether you were present at that meeting and whether the facts in regard to that meeting, as set forth in that letter, are substantially true?

A. I was present, yes, sir.

Q. And the facts are as set forth in this letter?

A. I do not remember the facts. The only interest we had was the rate feature.

Q. Suppose you tell us what you remember about that meeting. The question of the reduction of rates was discussed? 465

A. Yes, sir. The question of rates was involved by reason of our only being able to reach Albany and that region by way of, as I have already explained, Jersey City and the West Shore Railroad, or a more circuitous line. That was the only feature that was discussed or considered, so far as we were concerned.

Q. Was it stated at that meeting that the Delaware & Hudson had proposed to reduce published rates?

A. At this time I cannot testify to that fact. I do not remember.

Q. Do you or do you not remember that you learned that the Delaware & Hudson were considering the reduction of the published freight rate and that you reported the matter to President Baer; that is the fact, is it not?

A. I do not remember that, no, sir, that I reported it to Mr. Baer.

Q. You remember hearing about it?

A. I have no recollection of reporting it to any particular people. It is possible I did, but I could not testify positively to that.

Q. Do you recollect hearing about such a proposed reduction of rate by the Delaware & Hudson?

A. I did; yes, sir.

Q. You did hear about it?

A. The reduction that was considered at that meeting.

Q. After you heard about that proposed reduction, with whom did
466 you communicate in regard thereto?

A. I do not know that I communicated with anyone, as far as we are concerned.

Q. Did you communicate with Mr. William T. Grier, of the Lehigh Valley Railroad?

A. I did not communicate with him, because I was present with him at the meeting.

Q. Did you have any communication, oral or written, with him prior to that meeting?

A. I do not remember that.

Q. You do not remember whether you ever said to him that you proposed to report this matter to President Baer, with a view of persuading the Delaware & Hudson Company not to publish the proposed rates?

A. I do not remember. It is possible that I said that.

Q. It is possible?

A. Yes. I would not want to testify positively to that.

Q. You would not want to deny that as a fact if Mr. Grier testified that it was so?

A. No.

Q. What was done at that meeting in regard to the proposed reduction?

A. If I remember, the rate reductions were made, and that was the end of it.

Q. The reductions were made?

A. By the Delaware & Hudson; yes, sir.

467 Q. Did you take any part in the discussion?

A. No, sir; only except that meeting.

Q. Do you remember in November, 1906, any question regarding a proposed reduction of rates of the New York, Ontario & Western Railroad?

A. I think I do; yes, sir.

Q. Did you have any conversations or communications with Mr. William T. Grier, of the Lehigh Valley, in that connection?

A. I do not remember that I had any conversation with him. I had conversation with Mr. Childs, the general manager of the Ontario & Western.

Q. Did you have any conversation with Mr. Baer in regard to that proposed reduction?

A. No, I do not think so.

Q. You do not remember whether you had any conversation with him?

A. No.

Q. You talked with Mr. Childs?

A. Mr. Childs spoke to me about it.

Q. What was the substance of the talk? Did you approve or disapprove the proposed reduction?

A. I disapproved.

Q. You endeavored to dissuade him from lowering that tariff?

A. I pointed out to him I thought it was not necessary to make that rate; that the rate was a reasonable and fair rate.

Q. Do you remember that there was any conference in regard to 468 that?

A. No.

Q. Or anything further than your conversation with Mr. Childs?

A. Not on my part.

Q. Did you not know of any conference between President Baer and President Fowler?

A. No, sir.

Q. On that point?

A. No.

Q. Do you know what became of that proposal to make those reductions?

A. I do not remember. I do not know whether the rate was made or not; I can not tell at this time.

Q. Do you not remember that President Baer and President Fowler had a conference, in which the former, President Baer, insisted that——

By Mr. REYNOLDS:

Q. Were you present at any conference?

A. No.

Mr. COUDERT. I am asking him whether he remembers any conference.

Q. Do you remember any conference, at which you were present, or in regard to which you have any information, at which President Baer insisted that President Fowler should not advertise this lower rate? 469

A. I have not.

Q. You never heard that discussed?

A. No.

Q. You know, as a matter of fact, that that proposed rate was dropped?

Mr. REYNOLDS. You mean reduced?

Mr. COUDERT. The proposal to reduce the rate was dropped

A. I think there was a reduction made from the Wyoming and from that district during that period, but I can not absolutely say, except by reason of our own rates were reduced at that period.

Q. All you remember—and correct me if I am wrong—is, that you had a conference with Mr. Childs, who represented the New York, Ontario & Western in this matter, and that subsequent to such conference that proposed reduction of rate was dropped?

A. I remember that conversation or conference with Mr. Childs.

Q. Were you and he alone at that time?

A. Yes, sir; happened to be.

Q. There was no one else present?

A. No, sir; I think he met me on the ferryboat one morning and spoke to me about it.

Q. Did he speak of communicating with President Fowler in regard thereto?

470 A. No, sir.

Q. That is all you had to do with that particular rate?

A. Yes, sir.

Q. You endeavored to dissuade Mr. Childs from putting it into operation?

A. Yes, sir.

Q. In which you were wholly successful?

A. Yes, sir.

Q. In regard to the statement of facts contained in this letter of September 24, 1907, which you have read, you do not now state that those statements are not quite accurate, do you?

A. I can not say that; no sir. I do not remember the details of it.

Q. But they may well be quite accurate, as far as you remember, and you know you were present at the conference?

A. I was present at the conference.

Q. Are you familiar with the financial relations of the Central Railroad and the Lehigh & Wilkes-Barre?

A. No, sir.

Q. You have no information regarding that?

A. No, sir; no information.

Mr. Coudert asked Mr. Reynolds if he could furnish any information regarding a certain loan of twenty million dollars, from the railroad to the Lehigh & Wilkes-Barre Coal Company, made in 1910.

471 Mr. REYNOLDS. There was no such loan. In 1910 the Lehigh & Wilkes-Barre Coal Company floated a mortgage of twenty million dollars and sold the bonds under it, to the extent of about sixteen million dollars, to the public.

Mr. COUDERT. What was the relation of that loan, if any, to the railroad company?

Mr. REYNOLDS. None whatever, except that the railroad company had some prior bonds which it turned in, along with other bondholders, in exchange for the new bonds.

Mr. COUDERT. You will give me the proportions, the amount of bonds turned in by the railroad company, will you? It was a refunding loan?

Mr. REYNOLDS. No; it was not technically a refunding loan. Many of the bonds were paid off, I believe. It was simply a new mortgage, which was issued in regular course, and, as I recall it, everybody had an opportunity to take his money or a new bond; but the bonds sold at par and the credit of the Lehigh & Wilkes-Barre Coal Company was so excellent and the four per cent was so sure that about everybody insisted on reinvesting their money in the new bonds.

Mr. COUDERT. What did the railroad do?

Mr. REYNOLDS. The railroad has about six million dollars of those bonds. The railroad took about six million dollars in payment of an old loan.

Mr. COUDERT. Did the railroad guarantee that bond?

Mr. REYNOLDS. The railroad did guarantee that bond. 472

Mr. COUDERT. Then the railroad did have a relation to the bond; that of guarantor?

Mr. REYNOLDS. That was not what you asked me at all.

Mr. COUDERT. That is what I wanted to get at.

Mr. REYNOLDS. The Jersey Central guaranteed the bond.

Mr. COUDERT. I wanted the legal relation of the Jersey Central to those bonds.

Mr. REYNOLDS. It was a guarantor and it was also a pledgee of six million dollars of them.

Mr. COUDERT. And they are still outstanding?

Mr. REYNOLDS. And they are still outstanding.

Mr. DE FOREST. As I recollect, the Central Railroad Company took those new bonds in exchange for previous bonds of the Lehigh & Wilkes-Barre Company, which it had held; so, to that extent, it was an exchange of old bonds for new bonds.

Mr. REYNOLDS. My recollection is that the entire issue of bonds was sold through a syndicate, and that the syndicate sold the new bonds and paid off the old ones, technically.

Mr. DE FOREST. That is true.

By Mr. COUDERT:

Q. What, if anything, do you do to get the full tonnage of the Lehigh Coal & Navigation Company?

A. Nothing, more than for account of any other traffic. I of course 473 solicit the business, to that extent that I would any other.

Q. How do you solicit that business?

A. Ask the different shippers to favor us with the traffic all they can.

Q. In asking the Lehigh Coal & Navigation Company for their traffic, with whom do you confer? Who is the person with whom you confer?

A. Mr. Davies, generally.

Q. Then you go to him with that request for traffic?

A. Yes, sir.

Q. As a matter of fact, the bulk of their traffic does go to your road, does it not?

A. Quite a large portion.

Q. About two-thirds, is it not, or is it three-quarters? Do you remember, roughly speaking?

A. I do not remember exactly. I should say about two-thirds.

Q. Two-thirds to three-quarters?

A. Two-thirds.

Q. You think it would be nearer two-thirds than three-quarters?

A. Yes, sir.

Q. But it is at least that?

A. Yes, sir.

Cross-examination by Mr. REYNOLDS:

Q. What relations have you with the Lehigh & Wilkes-Barre Coal Company?

474 A. None whatever.

Q. Did you ever have?

A. No, sir.

Q. What relations have you with the Lehigh Coal & Navigation Company?

A. None whatever.

Q. Did you ever have?

A. No, sir.

Q. What is the shortest haul from the mines of the Lehigh Coal & Navigation Company to tidewater? Via what route is that shortest haul?

A. Via Mauch Chunk, Phillipsburg, and the Central Railroad of New Jersey to Elizabethport.

Q. Is that, as a matter of fact, the shortest haul of any tidewater run on anthracite coal?

A. Yes, sir.

Q. Is it a down-grade haul.

A. Most of it, yes, sir, up to Easton; it is a fair grade from Easton to Hampton, there is a reverse grade.

Q. All the way from the mines to Easton it follows the drop of the Lehigh River, does it not?

A. Yes, sir.

Q. The shortest and best route between the mines and tide?

A. Yes, sir.

Q. About how many meetings of freight traffic men and general freight agents do you attend a month to discuss rates? 475

A. From ten to fifteen and sometimes more.

Q. You are meeting with freight traffic managers and general freight agents to discuss rates, all kinds of rates, five or ten times a month right along?

A. Yes, sir.

Q. Is that true since 1906 and 1907, since this meeting with Mr. Childs was held and the meeting with Mr. Grier?

A. Yes, sir.

Q. And yet you do not remember all that took place at that meeting?

A. No, sir.

Q. Now, as I understand it, as a matter of fact, the Delaware & Hudson, in spite of all the hammering you gave them, went right ahead and reduced that rate?

A. Yes, sir.

Q. Right away?

A. Yes, sir.

Q. Did you reduce your rate?

A. No, sir.

Q. You still have been shipping coal to New England ever since, have you not?

A. Yes, sir.

Q. The effect on your coal traffic was not so disastrous as you were afraid it would be?

A. I was possibly overapprehensive in that connection. 476

Q. Events have proved you so, have they not?

A. Yes, sir.

Q. You went right at Mr. Childs hammer and tongs, too, did you not, trying to keep him from reducing his rate on the Ontario & Western?

A. Yes, sir.

Q. Did your best?

A. Yes, sir.

Q. You succeeded in that case, did you not?

A. No, sir; apparently not, as far as I know.

Q. October 16, 1906, was the date of that letter you wrote to Mr. Besler about Mr. Childs, was it not?

A. Yes.

Q. Do you happen to recall whether at that time a piece of litigation was pending in which the patriotic and public-spirited complainant was William Randolph Hearst?

A. Yes, sir.

Q. Do you remember that the defendants to that litigation were the Philadelphia & Reading, the Lehigh Valley, the Delaware, Lacka-

wanna & Western, the Central Railroad of New Jersey, the New York, Susquehanna & Western, the Erie, the New York, Ontario & Western, the Delaware & Hudson, and the Pennsylvania Railroad?

A. Yes, sir.

477 Q. Do you recall that that case was begun on November 3, 1902, before the Interstate Commerce Commission?

A. November, 1902; yes, sir.

Q. Do you happen to know that protracted hearings were held? Were you a witness?

A. I was a witness; yes, sir.

Q. Do you remember that the testimony in that case was about 4,500 pages?

A. I know it was very large; yes, sir.

Q. Do you happen to know that that case had been reargued just at this particular time, a few months before, and was then pending in 1906?

A. Yes.

Q. And your rates were involved in that litigation, were they not?

A. Yes, sir.

Q. Do you know what became of that case? Did the Interstate Commerce Commission agree with Mr. Childs that the rates were too high, or with you, that they were not too high?

A. The case was dismissed a few days ago by the Interstate Commerce Commission.

Q. Is that a copy of the order dismissing that celebrated proceeding of Mr. Hearst's [showing witness order]?

A. Yes, sir.

The Interstate Commerce Commission order shown witness is as follows:

478 Order of dismissal.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3rd day of February, A. D. 1914.

Edgar E. Clark,
Judson C. Clements,
James S. Harlan,
Charles C. McChord,
Balthasar H. Meyer,
} Commissioners.

No. 644.

WILLIAM RANDOLPH HEARST

v.

PHILADELPHIA & READING RAILWAY COMPANY ET AL.

Upon consideration of the record in the above-entitled case,

It is ordered, That the complaint in this proceeding be, and the same is hereby, dismissed.

It is further ordered, That a copy of this order be served upon each of the parties to this case.

By the commission.

[L. s.] GEORGE B. MCGINTY, *Secretary*.

Q. You received that when? 479

A. I received it day before yesterday, or on Friday.

Q. So that the Interstate Commerce Commission never did reduce either the Ontario & Western rates or your rates that you were trying to persuade Mr. Childs not to reduce?

A. No, sir.

Q. Other than the highly interested piece of litigation precipitated upon you by Mr. Hearst, have you ever had from any shipper—a genuine shipper on your line—any complaint filed against your rates, your regulations, your practices, or your car distribution, on anthracite business, since you have been in connection with the traffic department of the Central Railroad?

A. No, sir; not that I remember.

Q. Have you any operators on your road other than the Lehigh & Wilkes-Barre Coal Company and the Lehigh Coal & Navigation Company?

A. Yes, sir.

Q. Wholly independent operators?

A. Yes, sir.

Q. You know them all intimately?

A. Yes, sir.

Q. Grew up with them as a boy?

A. Yes, sir; many of them.

Q. Are they dependent upon the anthracite business for their livelihood, most of them?

A. Yes, sir. 480

Q. Are they poor or rich, prosperous or downtrodden?

A. From my observation, they have prospered; very much so.

By Mr. COUDERT:

Q. They find the present price of coal very profitable to them, do they not?

A. I should think so. Of course, that is not my business.

By Mr. REYNOLDS:

Q. How much premium do they usually charge above what we charge? What is the general charge of the independents now, today, if you know, what premium above the company price?

A. They likely charge from fifty cents to a dollar a ton premium.

Q. So that they are very prosperous out of that extra charge?

A. Yes, sir.

Q. In answer to one of Mr. Coudert's questions, which indicated that there were two routes to New England, the L. & N. E. and the L. & H. route, and that there was a third all-rail route, you answered that that was all there were. Do you want your answer to be understood as stating that, from the three coal-producing regions there are only three all-rail routes to New England?

A. No, sir.

Q. Is that a fact?

A. As far as other roads are concerned, there are about seven routes.

481 Q. All-rail?

A. All-rail.

Redirect examination by Mr. COUDERT:

Q. But over those other routes your coal does not go?

A. No.

Q. You get all the Wilkes-Barre Coal Company's tonnage, do you not?

A. You mean the Lehigh & Wilkes-Barre Coal Company?

Q. Yes.

A. Yes; I should think we do.

Q. What do you do to solicit that tonnage?

A. No more than I do with any of the others. There are no efforts——

Q. You make no efforts?

A. No more than I do with any of the other shippers.

Q. What do you do? Send notices of tariffs and so on?

A. We distribute the tariffs to all the shippers on our road of those that ask for them.

Q. And that is practically all?

A. Yes.

Recross-examination by Mr. REYNOLDS:

Q. Is your road lined with industries from one end to the other?

A. Yes, sir. From Mauch Chunk to Easton there are a great many
482 industries, and from Easton to Jersey City there are a great many of them.

Q. You serve Newark, New Jersey.

A. Yes, sir.

Q. You serve the factory locality around Bergen Point?

A. Yes, sir.

Q. Elizabethport, Bayonne, South Shore?

A. Yes, sir.

Q. Is that, in your traffic experience, the richest fuel consumption territory in the United States?

A. Yes, sir.

Redirect examination by Mr. COUDERT:

Q. What is the proportion of coal sent by your prosperous and highly influential boyhood friends among the independents over your line?

Mr. REYNOLDS. I hand you a memorandum to refresh your recollection, that you made up on Saturday, Mr. Koons.

A. For the fiscal year ending June, 1913, it is about 1,691,000 tons.

Q. That is from the independent shippers?

A. Independent shippers.

Q. Are any of those shippers producing from lands leased by the Lehigh & Wilkes-Barre Company to them?

A. That I can not answer.

Q. That you do not know?

A. I do not know anything about that.

Q. You do not know how large a proportion of that tonnage comes from lands owned by the railroad coal company? 483

A. No; I do not.

Q. Are there not some shippers, as a matter of fact, whose tonnage you make special efforts, write special letters, use an especial amount of the superabundance of your energy to obtain?

A. I do not remember now.

Q. You do not deny there are such shippers?

A. I make efforts in every direction.

Q. There are some special shippers whom you make special efforts to get?

A. I do not have any special shippers in mind; no.

By Mr. REYNOLDS:

Q. The Red Ash Coal Company mines an outcrop which is owned by the Lehigh & Wilkes-Barre Coal Company. Is the Red Ash included in that list of independents?

A. No, sir.

At 1.15 p. m. a recess was taken until 2.30 p. m.

E. B. CROSLEY, having been duly sworn, was examined as follows:

By Mr. COUDERT:

Q. What is your position with the Reading Railway?

A. General coal freight agent, Philadelphia & Reading Railway.

Q. And you have been how long with them? 484

A. Since July 1, 1907, as coal freight agent and general coal freight agent.

Q. And before that time?

A. Before that time I was assistant general freight agent for several years.

Q. For three or four years?

A. Since 1898; from 1898 to 1907.

Q. So that you are thoroughly familiar with all the routes over which the coal originating on the Reading system goes?

A. As assistant general freight agent I had nothing to do with the coal movement. My knowledge of the coal business has been entirely since July 1, 1907.

Q. I am going to ask you to point out on the map, if you will, the various routes which coal originating in the coal region of Pennsylvania along your lines takes?

A. All of the coal on our line originates practically between Shamokin and west of Haucks. It does not go up to Haucks by some miles. That would cover that district; and from Tamaqua to Lykens.

Q. That is in the Schuylkill region?

A. It all originates in the Schuylkill region.

Q. Does all your coal originate in the so-called Schuylkill region?

A. Yes, sir.

Q. None of it in the Lehigh region?

A. No, sir.

485 Q. Name, as far as you may in the order of their relative importance, the various routes over which all of your coal there produced goes.

Mr. REYNOLDS. May I interpose one thing here? When Mr. Coudert uses the words "your coal" to these railroad men, it is understood it is the coal moving over the railroad from all shippers?

Mr. COUDERT. The coal from all shippers originating on their road. By originating on the road, I mean all coal shipped on the road and from collieries with which the road has some physical connection. Is that what you understand by originating?

Mr. REYNOLDS. Yes.

The WITNESS. That is what I had in mind in describing the territory. Now instead of naming these in the relative importance, I presume you have in mind the tonnage?

Q. The tonnage.

A. I think possibly it would be well to start and go round, because I do not carry in my mind just exactly the relative tonnage.

Q. Do it in your own way. You can give me the tonnage later.

A. We carry the tonnage for the New York Central and its connections, including the coal for transshipment to vessels at Buffalo, via the Philadelphia & Reading Railroad to Newberry Junction, whence it moves over the New York Central and connections. Via that route we also carry coal for deliveries on the Boston & Albany

486 Railroad. That coal moves via the New York Central and Albany and Boston & Albany.

Q. Going through Newberry Junction?

A. Going through Newberry Junction. The next route of importance is our route to New England, in connection with the New York,

New Haven & Hartford Railroad. That traffic moves via our line to Reading, thence to Allentown, thence via the Central Railroad of New Jersey to Easton; thence via the Lehigh & Hudson River Railway to Maybrook and beyond via the Central of New England and New York, New Haven & Hartford Railroad. Those two routes—the one I have just described and the route via Newberry Junction, New York Central and Boston & Albany—represent our two all-rail routes to New England.

Q. Do you have any other routes, all rail or otherwise, by which you send coal to New England?

A. There is a certain amount of anthracite coal which is transshipped at Port Richmond.

Q. Before we come to that, does any of your coal go by this Lehigh and New England Railroad to New England?

A. No, sir; no rates are established by that route.

Q. Now describe the water route to New England.

A. Practically all of the New England tonnage which moves by water, as to the coal which originates on our line, comes to Port Richmond and is there transshipped into vessels and moved to New England water points by water.

Q. That is a considerable amount, is it?

A. Yes. 487

Q. A substantial amount?

A. Yes, sir; a substantial amount.

Q. How does that compare in price with the railroad routes, in rates?

A. We only have the rate here to Port Richmond, and of course the rate from Port Richmond would vary somewhat.

Q. Is there a through rate on that?

A. No, sir; our railroad transportation and rate ends there at Port Richmond, when the coal is dumped into the vessel.

Q. Your coal could go to New England by way of the Lehigh & New England, could it not?

A. In that case we would deliver the coal to the Central Railroad of New Jersey just the same at Allentown, and they would deliver it to the Lehigh & New England at South Bethlehem, just the same as they would their own coal—a perfectly feasible route; but there has never been any necessity, so far as we know, for the establishment of such a rate.

Q. You have described the passage of the coal to New England by those three routes. Now describe your other routes, in your own order.

A. The next route in order here would be a route to Baltimore, or two routes to Baltimore, to Washington, Richmond, and points in the South, to which there are no through rates established, that route

being via Philadelphia, and in the one case in connection with the Baltimore & Ohio Railroad and in the other case in connection with
488 the Philadelphia, Baltimore & Washington.

Q. That is one of the routes to Philadelphia and points south, or rather to points south of Philadelphia?

A. That represents the two routes. After it gets to Philadelphia we turn that traffic over either to the B. & O. or to the P., B. & W.

Q. Let me ask you whether, in addition to that route to points south of Philadelphia, you also use the route of this little railroad [indicating], the Wilmington & Northern?

A. I think there are a few points on the Baltimore & Ohio Railroad—I am not clear as to that; I do not recall; but if there are, there are just a very few points where the movement is via the Wilmington & Northern.

Q. Do you happen to remember whether any of your coal goes over that Wilmington & Northern Railroad?

A. Oh, yes; there is quite a large amount of coal which originates on our lines which goes to Wilmington proper, for delivery in that city.

Q. But do I understand you to say that there is very little of that coal that goes beyond Wilmington through routed to somewhere else?

A. Very little.

Q. So that the bulk of coal that goes over the Wilmington & Northern is destined for ultimate consumption in Wilmington?

A. The larger proportion; yes, sir.

489 Q. Is it or is it not perfectly feasible to route coal over the Wilmington & Northern for consumption points south of Wilmington, and if it be feasible, how could it be done?

A. It might be done by practically rebuilding the Wilmington & Northern Railroad. So far as the map is concerned, it looks to be a perfectly feasible route; but I think I am safe in saying—that is more largely a transportation matter—but I think I am safe in saying that it would requre a different class of road from what the Wilmington & Northern is to handle any substantial increase in tonnage.

Q. Perhaps you do not understand my question. You testified that a good deal of tonnage, without saying how much, goes over the Wilmington & Northern Railroad to Wilmington?

A. Yes.

Q. I understand that the Wilmington & Northern terminates at Wilmington?

A. Yes.

Q. Now, having that tonnage at Wilmington, is there any reason why, by connecting with some other road, it would not go to the southern points?

A. Nothing except that that would mean an additional amount of tonnage.

Q. Any amount of tonnage that you chose to send might be sent via Wilmington to the South over that Wilmington & Northern road, as I understand it?

A. Provided it were capable of handling it physically.

Q. That is, there are railroad connections there, if you chose to make them? 490

A. Oh, yes, sir; putting the question in that way. The Wilmington & Northern Railroad connects at Wilmington—or rather at a point near Wilmington—with the Baltimore & Ohio Railroad, for example.

Q. In sending the through coal traffic to points south of Wilmington by the Philadelphia route you are guided merely by your own preference or convenience, are you not?

A. We are guided largely by the economy of operation, etc.

Q. Precisely; but, as a matter of fact, if you could not send the coal to points south of Wilmington through Philadelphia, you could send it by this other route, on the Wilmington & Northern?

A. To a limited extent; yes, sir.

Q. Limited only by the carrying capacity of the railroad?

A. Practically; yes.

Q. Now, you have testified as to those routes. Will you tell us of any other routes. Take, perhaps, the tidewater routes. You have shown one tidewater route to Philadelphia., Now, is there any other?

A. The tidewater route to Port Reading. If you mean by that, coal going to a tidewater point for transshipment by vessels, that traffic moves via Trenton Junction to Port Reading.

Q. Does a large proportion of your anthracite go over that route to Port Reading?

A. Quite a large proportion; yes. 491

Q. And that proportion goes over your road without passing over the lines of any other carriers, does it not?

A. Yes, sir.

Q. Passing through Philadelphia to Port Reading?

A. I beg your pardon, the Port Reading Railroad is not all Philadelphia & Reading Railway, if that is what your question is directed to.

Q. No; I understand the legal part of it; but it goes over the Philadelphia & Reading Railway and the Port Reading Railroad to Port Reading?

A. Yes, sir.

Q. And does all your anthracite destined for New York tidewater go that way?

A. So far as I know.

Q. Are there any other routes to tidewater than the two that you have testified to, namely, Philadelphia and Port Reading?

A. We have a tariff to Port Liberty via which I think a small, very small, proportion of coal moves. That is via Bound Brook and the Central Railroad of New Jersey.

Q. That is, some of your anthracite, a small portion?

A. Very small; probably not over three or four thousand tons a year.

Q. That is a practical route? I mean you could increase the quantity of anthracite that went over that route if you so desired?

492 A. I do not think we could. I think the Jersey Central can tell you better about that; but my understanding is that they are handling now between Bound Brook and Jersey City practically a maximum tonnage.

Q. Lacking terminal facilities?

A. I think that is true. That is a question that is outside of my jurisdiction.

Q. So that Port Reading and Philadelphia are your two great tidewater destinations for your coal?

A. That is true.

Q. Are there any other routes?

A. Then we send a certain amount of coal West, which follows the main line to Reading and thence west to Harrisburg and down to Shippensburg, where we connect with the Western Maryland Railroad and the Cumberland Valley Railroad, and those two roads connect with the Baltimore & Ohio Railroad, via which the shipments are made to the West.

Q. Shippensburg is the terminus of your railroad in that direction?

A. The terminus of our railroad in that direction; yes, sir.

Q. Roughly speaking, how far is that from Harrisburg?

A. About forty-two miles.

Q. Have you any water route to Philadelphia?

A. We publish a tariff in connection with the Schuylkill Navigation Company.

Q. Describe that route.

493 A. The coal comes via that route to Port Clinton. There it is dumped into barges, canal boats, and sent down to Philadelphia.

Q. And your counsel will later furnish me the proportion of coal that goes that way. Is there a substatnial proportion, do you remember now?

A. Roughly, I think about 50,000 tons a year only.

Q. Are there any other routes?

A. Those, I believe, represent substantially what would cover 95 per cent of our tonnage. We send some coal via White Hill, a point just west of Harrisburg, to points on the Cumberland Valley Railroad.

In the aggregate that is quite a substantial tonnage, but not as a proportion.

Q. Is it true that coal originating in this Panther Creek district, between Hauto and Tamaqua, can go to New York tidewater equally via the Central Railroad or by the Philadelphia & Reading Railway?

A. I should say it could go preferably via the Central Railroad, as comparing the two routes.

Q. Because it is shorter, you mean?

A. It is shorter and——

Q. Are there any differences in the rates?

A. We have no rate from the Panther Creek district to Port Reading.

Q. Have you a rate from Tamaqua, for instance?

A. We have a rate from Tamaqua to Port Reading; yes, sir. 494

Q. Now the coal from Tamaqua could, I understand, go either over your railroad, the Philadelphia & Reading, or over the Jersey Central, to New York tidewater?

A. You mean the coal from Tamaqua which originates in the Panther Creek district?

Q. Originating anywhere there.

A. You mean coal originating on our line?

Q. On your line there.

A. It could not, with our consent.

Q. That is exactly it.

A. Because we naturally have a road built; we have a road built to carry coal.

Q. If the Central Railroad had spurs going into those same colleries, there is no reason it should not go by that more direct route?

A. No reason at all.

Q. The only reason it does not so go is because you have spurs running into those colleries and they have not?

A. That is not exactly true, because I take it that your question is based on the theory that the lines are parallel.

Q. No, it is not based on any theory. I just want the fact about it.

A. It is not true. For example, sir, the Jersey Central stops in this direction, for instance, at Hauto. Now they could not possibly reach the colleries on that line, for example, by the construction of spurs [indicating on map].

Q. Without passing over your line? 495

A. Yes. Of course, that would not be a spur from their line, it would be a spur from our line.

Q. But could not your road carry coal originating along the Panther Creek route from Tamaqua to the tidewaters?

A. Yes, we could.

Q. And do?

A. No, we do not. We carry it to Port Richmond.

Q. You do so carry it, originating at Tamaqua, to Port Richmond?

A. Yes.

Q. Could not that same coal go over the Panther Creek Railway, connecting with the Central Railroad of New Jersey, and go to the tidewaters?

A. You mean would it be a physical possibility?

Q. Precisely.

A. Yes, there would be a physical possibility.

Q. What would be the inconvenience, if any?

A. The inconvenience would be, in the first place, that there would be no possible object—could be no possible object, either business or otherwise—for this traffic, which originates here between Pottsville and Tamaqua, being turned over to the Central Railroad of New Jersey.

Q. Except your suggestion that the route was a much shorter one?

A. It is shorter as regards this transportation from the Panther Creek district.

496 Q. Precisely.

A. Now then, the rate is the same to Port Reading as it is via the Jersey Central—and from the Panther Creek district to Elizabethport.

Q. So that, even though, as you suggest, this may be the shorter route, nevertheless the rates being the same, there would be no advantage in routing it that way?

A. Not from a rate standpoint.

Q. Rather than in routing it over the Reading route?

A. It is merely a case where a long line has met the short line rate.

Q. So that there is equality as between the two roads in reference to that coal?

A. I think so.

Q. There is no advantage in sending over one rather than the other?

A. No.

It is understood that counsel for the Philadelphia & Reading Railway and the Jersey Central will furnish, in the form of statistical tables, the amounts of tonnage passing over these various routes, as arranged with counsel for the Government.

By Mr. COUDERT:

Q. You have spoken of one route to tidewater through Allentown,
497 I think, over a connection of the Central Railroad. Could not that same coal——

A. I beg your pardon, I have not spoken of that.

Q. Was it one of the other witnesses?

A. I have spoken of a New England tonnage moving via Allentown and Easton.

Q. That is what I had in mind. Now I want to ask you whether, as a matter of fact, that tonnage could not go equally well over the Lehigh Valley Railroad?

A. We have a connection with the Lehigh Valley at Allentown. I am not at all sure about the Lehigh Valley connection with the Lehigh & Hudson at Easton. I do not know whether they have a connection there or not.

Q. Can you tell me in general where you get your tonnage from, from the mines of what companies?

A. I can not tell the order of production. I can tell you, of course, that we get a large proportion of the coal from the Philadelphia & Reading Coal & Iron Company, if that is the purport of the question.

Q. And some of the coal you get from independent producers, not connected with the railroad company or with the coal company, do you not?

A. We get quite a substantial amount from individual operators.

Q. And you get a substantial amount, as I understand it, from the Lehigh Coal & Navigation Company?

A. Yes.

Q. That goes mostly to what points, do you remember? 498

A. That goes mostly to points on our line.

Q. To points on your line, exclusively on your line?

A. Yes; in Pennsylvania.

Q. Largely to Philadelphia, do you mean?

A. Yes; Philadelphia and Reading and Lebanon, and various places in Pennsylvania.

Q. Some of the Lehigh Coal & Navigation Company's coal goes to New York tidewater, does it not?

A. Not over our line; no, sir.

Q. It goes over the Central Railroad of New Jersey?

A. I do not know.

Q. You do not know about that, but it does not go over your lines?

A. No.

Q. Do you know anything of leases of coal lands?

A. I have nothing to do with that; no, sir.

Cross-examination by Mr. REYNOLDS:

Q. In the region tributary to the tracks of the Philadelphia & Reading Railway Company, to the southwest of Tamaqua in the direction of Pottsville and Port Clinton, how far from Tamaqua is the colliery on your lines nearest to Tamaqua?

A. I should think, without knowing definitely, that it was eight or ten miles.

499 Q. For coal to move from that nearest colliery through Tamaqua over your road, and then over the Lehigh & New England Railroad, and then over the Jersey Central eastbound, would, therefore, involve a three-line haul for all that traffic, as against a one-line haul, would it?

A. That is true.

Q. That would mean three interchanges of billings and accountings, and all the inconvenience of a three-line haul against a one-line haul?

A. That is true.

Q. For the Philadelphia & Reading to move coal in the reverse direction—let us say, for example, from Nesquehoning—would involve a haul over the New Jersey Central from Nesquehoning to Hauto, over the Lehigh & New England from Hauto to Tamaqua and then, let us say, from Tamaqua over the Philadelphia & Reading around to New York Harbor, a three-line haul, in order to get the coal off the Jersey Central?

A. It would be open to the same objection that you have just stated in the other case.

Q. In both cases such a movement would involve handling over the Lehigh & New England Railroad?

A. That is true.

Q. To cross from the Jersey Central to the Reading, or from the Reading to the Jersey Central?

A. That is true.

Q. About what is the comparative distance, let us take from
500 Nesquehoning colliery, to New York via the Jersey Central on a single line, and from Nesquehoning via this circuitous, three-company route, to New York Harbor?

A. I should think the distance from Nesquehoning to New York Harbor via Mauch Chunk and Easton would be in the neighborhood of 140 miles, and via the route which you have just referred to would be 200 miles.

Q. So the ratio is about 140 to 200?

A. I think so.

By Mr. COUDERT:

Q. 140 miles by the Jersey Central and 200 by the Reading; is that right?

A. From the point on the Jersey Central to which Mr. Reynolds has referred.

By Mr. REYNOLDS:

Q. Nesquehoning is the nearest colliery to Hauto, is it not, on the Jersey Central?

A. So I understand; yes, sir.

Q. Refresh your recollection with that distance table. What does that show the distance from Hauto to Jersey City as via the Jersey Central?

A. It is only 128½ miles. It is nearer Mauch Chunk than I thought it was.

By Mr. COUDERT:

Q. The distance over the Jersey Central is 128 miles, you say?

A. Yes, sir.

Q. And of that 128 miles how many miles would be over the 501
Lehigh & New England?

A. I do not think any of it.

Mr. REYNOLDS. Nesquehoning is located directly on the Central Railroad of New Jersey.

Redirect examination by Mr. COUDERT:

Q. Can you tell us the freight rates on the various sizes of coal on your road to the New York tidewater, Port Reading, from the mine?

A. $1.55 on prepared sizes, $1.40 on the pea coal, $1.25 on buckwheat No. 1, $1.10 on buckwheat No. 2 and smaller. All of those are per gross ton of 2,240 pounds and include the dumping at Port Reading piers into vessels.

Q. Do you know what proportion of that goes to the Port Reading Railroad?

A. I do not know, offhand; no, sir.

Q. The rates are the same over the Jersey Central, are they?

A. You mean to Elizabethport?

Q. Yes; to tidewater.

A. You mean the rates that are published by the Central of New Jersey to Elizabethport?

Q. Yes.

A. I understand they are the same; yes, sir.

Q. How long have your rates been that, do you know?

A. Ever since I knew anything about them. 502

Q. That is how many years?

A. That is seven years, practically.

Q. During those seven years they have not changed?

A. They have not changed; no, sir.

Q. And the rates over the Jersey Central have not changed, have they?

A. I think not. I do not recall that there has been any change in those rates.

Q. Have you any information when, if at all, that rate was changed so as to be what it is now?

A. I have no recollection. I would have no recollection, and I have no recollection of the records that would show that; no, sir.

Q. Do you know whether your road gets any shipments of coal from collieries belonging to the Temple Iron Company?

A. I do not know. They do not unless the collieries are on the Philadelphia & Reading Railway.

Q. Do you testify that they do get any shipments of coal from collieries belonging to the Temple Iron Company that are on the Reading Railway?

A. I do not recognize—I do not know of any collieries on the Reading Railway that are the property of the Temple Iron Company or in anywise connected with the Temple Iron Company.

Q. Do you know whether your road carries any coal belonging to colliery companies separate and independent, as far as name goes, but which belong to the Temple Iron Company?

503 A. No, sir; I do not know of anything of that sort.

Mr. REYNOLDS. They do not, if you want to accept my statement.

The WITNESS. There is no colliery on our line that I know of as being in anywise connected with the Temple Iron Company.

By Mr. HEEBNER:

Q. Or any of its subsidiaries?

A. Or any of its subsidiaries.

By Mr. COUDERT:

Q. What methods, if any, do you employ to obtain coal tonnage for your line?

A. Do you mean the anthracite?

Q. Yes.

A. Practically all of the coal which moves over our line originates at collieries which are on the line.

Q. So you do not have to use any solicitation to get it? You get it in the course of events, naturally?

A. It would come to us naturally, the same as any other industry that was located along the line of the road.

Q. Is there no other way in which it could go?

A. In some cases; there are some collieries that have connections with other lines.

Q. What other lines?

504 A. I think there are one or two collieries that have connection with the Pennsylvania Railroad. I just happen to think of one colliery.

Q. Are there any that have connection with the Central Railroad of New Jersey.

A. Not that I know of; no, sir.

Q. Suppose that, for any reason, the Reading system was destroyed by a calamity or otherwise, could not operate; how could the coal from these collieries be taken to the market?

A. You mean if the Reading Railway were destroyed or demolished?

Q. If it disappeared.

A. Somebody else would have to construct a railroad there.

Q. How much trackage would it take, do you suppose, to reach the bulk of those collieries served by your line?

A. It is almost impossible to answer that, because the conditions vary. There are many collieries where it would require an extension of several miles of railroad.

Q. There are some where it would require only a half mile?

A. There are very few, I would say, where they could be reached with a half mile; but, of course, the distances would vary in the case of almost every colliery, according to its location.

Q. Could you give, from your recollection and great familiarity with the district, an approximate maximum and minimum of distances from the collieries to any road other than the Reading?

A. I would not want to undertake to do that, sir, because I do not 505
have to do with the physical territory at all, and it would be the merest guess if I said anything at all.

Q. You think it might be half a mile to several miles?

A. Yes; that would be my own judgment.

Q. But four or five miles would reach the great bulk of the collieries?

A. No, I would not think that that was the case.

Q. Seven or eight?

A. Then you want to bear in mind, too, Mr. Coudert, that four or five miles in the anthracite-producing region, as in almost any other coal-producing region, may mean five miles across a mountain.

Q. Because of the character of the country?

A. The character of the country; so that, speaking of distances, it is very misleading, and I should hesitate to attempt to give any testimony on that that would be worth anything at all on that point.

AGNEW T. DICE, having been duly sworn, was examined as follows:

By Mr. KINGSBURY:

Q. You are connected with the Philadelphia & Reading Railway Company?

A. I am vice president and general manager since January 1, 1913.
506 Two years prior to that time I was general manager. Eight years prior to that general superintendent, and before that time ten years as division superintendent.

Q. So that takes your connection with the Reading system back to what date?

A. The 1st of April, 1894.

Q. Prior to that time you had been in the railroad business, had you not?

A. For two years with the New York Central and for ten years with the Pennsylvania Railroad.

Q. How do your duties as general manager differ from your duties as general superintendent before?

A. They were enlarged somewhat and extended over some of the departments that I formerly did not have charge of.

Q. So that you are very familiar, generally, with the operations of the Reading system?

A. Yes.

Q. You are acquainted with the Port Reading Railroad, so-called?

A. I am.

Q. Do you hold any official position in connection with that?

A. I think I am vice president and general manager of that.

Q. What is its relation to the Philadelphia & Reading Railway Company?

A. I can only answer that question from an operating standpoint. The Port Reading Railroad has its own organization and operates its railroad. The engines and cars of the Reading Railway run over the Port Reading Railroad.

Q. Its terminus is on New York tidewater, the terminus of the
507 Port Reading Railroad?

A. It is on the bay, about 18 miles south of New York.

By Mr. REYNOLDS:

Q. On the Kill von Kull?

A. Kill von Kull properly, yes.

By Mr. KINGSBURY:

Q. A large amount of the coal traffic on the Reading Railway goes to Port Reading?

A. There is a very large tonnage, yes, of the Reading coal goes to Port Reading.

Q. Substantially all of it?

A. Oh, no; no, indeed.

Q. I thought Mr. Crosley did testify that all that went to tidewater——

A. All that goes to tidewater, for New York points, goes to Port Reading.

Q. I meant New York tidewater; I omitted that qualification. Then that is the fact, that nearly all that goes to New York tidewater goes to Port Reading?

A. Very nearly all of it, yes.

Q. But it could also go via Bound Brook and the Jersey Central to Port Liberty?

A. There is a line running, of course; the Central Railroad have a line from Bound Brook Junction to Communipaw and Port Liberty, so that coal can move via that route; but, if it were attempted to 508
move all of the New York coal that now goes to Port Reading, to Port Liberty, it would, I think, require very considerable addition, not only to the line of railroad between Bound Brook Junction and Port Liberty, but would require a very great extension of the piers at Port Liberty.

Q. But you have ample terminal facilities at Port Reading?

A. We have.

Q. Is that the only, or the controlling, factor in determining whether coal is to be sent to Port Reading or Port Liberty, the fact of the greater terminal facilities at Port Reading, or are there any other reasons which induce that route?

A. I really can not answer that, being confined to the operating department. We have developed facilities at Port Reading that, of course, we like to make use of.

Q. Are you acquainted with the rates between the coal fields and New York tidewater, and other points in general?

A. I can hardly say that I am.

Q. That is not within your province at all?

A. No; I have nothing at all to do with the rates.

By Mr. COUDERT:

Q. Nor the proportion of the rate that the Port Reading Railroad gets?

A. No.

By Mr. KINGSBURY:

Q. Nor with the financial relations between the Port Reading Railroad and the Reading? 509

A. No, sir; that is really not my affair at all.

Q. You are an operating man?

A. I am an operating man, pure and simple.

By Mr. COUDERT:

Q. Does any other freight besides coal go over the Port Reading Railroad to the tidewater?

A. Practically all of that business is anthracite and bituminous coal.

Q. Is there any reason why other freight should not go that way to tidewater?

A. There is no local consumption of any freight at Port Reading, and I would see no reason for sending any other freight via that line.

Q. But of course it could go that way and be at the New York tidewater, and go to any of the markets that the New York tidewater leads to?

A. It would be possible to handle it in that way.

Q. So that all the freight that passes over the Reading Railway other than coal freight might go to Port Reading?

A. Destined to New York Harbor, it might.

By Mr. HEEBNER:

Q. Eighteen miles below the city?

A. Yes; it would have to be transshipped at Port Reading to boat and hauled to New York via water.

By Mr. KINGSBURY:

510 Q. Where does the bulk of your merchandise freight, destined for New York and adjacent points, go to?

A. That comes from Bound Brook Junction to Communipaw, at Jersey City, over the Central Railroad of New Jersey.

Q. So that your merchandise freight comes to Jersey City and your coal freight goes to Port Reading?

A. Yes.

By Mr. COUDERT:

Q. In either event it has to be transshipped?

A. Yes. I want to qualify my statement as to its being physically possible to handle merchandise and other freight via Port Reading the same as coal is. Coal, you understand, is transshipped at Port Reading into barges and delivered to coal yards, practically all of which, I believe, are along the water front here in New York. Now the merchandise freight is brought into Jersey City and is largely distributed to the various stations in New York by car float. The cars themselves are loaded on floats and towed across the river, and it would not be possible, of course, under all conditions of storm and weather to handle car floats from the Kill von Kull at Port Reading up to New York.

Q. In other words, Communipaw is a more convenient terminal than Port Reading, but they are both possible terminals to New York Harbor?

A. They are both possible terminals, except I doubt if it would be possible to handle car floats between Port Reading and New York
511 under all conditions.

Q. Under all conditions it might not be so convenient, but if you look out of the window, you can see them coming now.

A. It might be done, but commercially it would not be possible, I would say.

Q. Commercially, it would not be as advantageous?

A. Not nearly so.

By Mr. KINGSBURY:

Q. Does the Reading Railway Company operate any seagoing tugs and barges for the transportation of coal from Port Richmond or Port Reading and other points?

A. I understand they operate some barges from Port Richmond but none from Port Reading.

Q. To what points do they operate from Port Richmond?

A. To points on the New England coast.

Q. Direct by water?

A. Yes.

Q. Going through Long Island Sound or via the ocean route?

A. I think they go outside. I am not familiar, however, with that operation.

Q. You do not know how extensive that traffic is?

A. It is rather extensive, and I think it is all handled outside of the Sound.

Q. Has the Reading formerly operated seagoing tugs and barges from Port Reading, in past years?

A. We operate tugs, but they handle individual barges from Port 512
Reading.

Q. I do not quite understand about individual barges. You mean not the railroad's own barges, but barges of individuals?

A. Yes.

Q. What is that method of operation?

A. The barges are taken to Port Reading and are loaded with coal and the Reading tugs deliver the coal, in those barges, to New York and take the empty barges back to Port Reading.

Q. That coal is all delivered to New York points, none of it through the Sound or to New England points?

A. I think it is all in New York Harbor.

Q. That is done at the present time?

A. Yes.

Q. Has it in the past operated any water service to New England from Port Reading?

A. Not to my knowledge.

Q. You are very generally acquainted with the various coal-carrying roads and their officers, are you not—know who most of them are?

A. Yes.

Q. I have before me here a list of the directors of the Lehigh & Hudson River Railway Company. George F. Baer is the first name on the list. He is president of the Reading companies, is he not?

A. Yes.

513 Q. Robert W. De Forest; is he connected with any that you know of?

A. Not with any of the Reading companies.

Q. Or any other companies you know of?

A. I think he is connected with the Central Railroad.

Mr. REYNOLDS. He is vice president and a director of the Central Railroad of New Jersey.

Mr. KINGSBURY. George D. Dixon.

Mr. REYNOLDS. George Dixon is vice president of the Pennsylvania Railroad.

Mr. KINGSBURY. Thomas P. Fowler.

Mr. REYNOLDS. He was vice president of the New York, Ontario & Western years ago. He is not now. I think he has retired now. Mr. Fowler is not, I think, connected any longer.

Mr. KINGSBURY. George H. Frazier.

Mr. REYNOLDS. He is in Brown Bros. banking house.

Mr. KINGSBURY. Lewis A. Riley is president of the Lehigh & Hudson Railway?

Mr. REYNOLDS. Yes.

Mr. KINGSBURY. Morris Rutherford.

Mr. REYNOLDS. He is connected with no other road.

Mr. KINGSBURY. Edward T. Stotesbury.

Mr. REYNOLDS. He is connected with about all the railroads. He is one of the defendants in this suit.

Mr. KINGSBURY. Eben B. Thomas.

514 Mr. REYNOLDS. President of the Lehigh Valley and a director of it.

Mr. KINGSBURY. William F. Truesdale.

Mr. REYNOLDS. President of the Lackawanna and a director of it.

Mr. KINGSBURY. Frederick D. Underwood.

Mr. REYNOLDS. President of the Erie.

Mr. KINGSBURY. Samuel D. Warriner.

Mr. REYNOLDS. President of the Lehigh Coal and Navigation Company.

Mr. KINGSBURY. Rollin H. Wilbur.

Mr. REYNOLDS. Vice president of the Lehigh Coal and Navigation Company.

Cross-examination by Mr. REYNOLDS:

Q. As the operating man in charge of the Reading system, and the Port Reading Railroad, you have no discretion whatever, have you, except to follow the card manifests on the cars?

A. Not the slightest.

Q. You simply have to transport any commodity wherever the shipper orders you to?

A. My duty is to operate the railroad. I have nothing to do with the routing of freight.

Q. If a shipper orders coal sent to Port Reading, no matter who he is, you have to take it to Port Reading? That is all your job is?

A. We do that.

Q. Now, in connection with your merchandise traffic, you run 515
some despatch lines from Jersey City to Harrisburg, do you not?

A. Yes.

Q. In connection with the Jersey Central?

A. Yes.

Q. Via Allentown?

A. Yes.

Q. Those trains are scheduled to leave at either end at five o'clock at night and are at their destination in the morning, are they not?

A. Yes.

Q. Would it be possible to handle any such merchandise despatch business via any car floats or any other long tow to Port Reading, if you had the facilities there?

A. It would be utterly impossible.

Q. Do you know whether a great deal of the merchandise despatch business at the New York end is physically delivered in Jersey City via trucks and drays which cross the ferries?

A. I have no personal knowledge of that.

Q. The tugs which you speak of as operating from Port Reading are all the small harbor tugs, are they not?

A. Yes, sir.

Q. You have no fleet of seagoing tugs at Port Reading? 516

A. No fleet of seagoing tugs at Port Reading.

(Adjourned until Thursday, February 19, 1914, at 11 a. m.)

Met pursuant to adjournment at No. 2 Rector Street, New York 517
City, Thursday, February 19, 1914, at 11 o'clock a. m.

Present: The examiner; Messrs. Coudert and Kingsbury, special assistants to the Attorney General, for the Government; Messrs. Heebner, Reynolds, Turner, and Drinker, for defendants.

RICHARD T. DAVIES, recalled.

By Mr. KINGSBURY:

Q. At the last session you were asked to produce a statement showing the total amount of coal transported over the tracks of the Panther Creek Railroad classified according to the railroads over which it was to pass?

A. Yes, sir.

Q. Have you prepared and do you produce such a statement?

A. Not exactly that. I have prepared the entire distribution of our tonnage through the different gateways or outlets for the three years, but that includes the tonnage of one colliery that I have not been
518 able to get actually now, but will furnish later. A portion of the coal went into the canal, and, therefore, would have to be separated from the other. It is rather a laborious operation, but we will give you that very shortly.

Q. All of the coal shown on this statement, except that from the Nesquehoning colliery, first passes over the tracks of the Panther Creek Railroad?

A. Yes, sir.

Q. And you will supply a statement of the amount of coal coming from the Nesquehoning colleries?

A. Yes, sir.

Q. So that that may be subtracted and total amount shown?

A. Yes, sir.

By Mr. DRINKER:

Q. Will you be able to state where the coal from the Nesquehoning colliery went?

A. A portion of it goes to Coalport for the canal reloading, and all the rest of it goes over the Central Railroad line.

Q. Does not some go into the storage yard?

A. No. There was at one time a small tonnage carried back, but it involved a charge for transportation of 10 cents a ton, and so we have kept that latterly out of the storage yard.

Q. Then you will furnish an additional statement showing the tonnage in this statement coming from the Nesquehoning colliery and where that went?

519 A. Yes, sir.

Q. So that may be subtracted from these items and show what Government's counsel has asked you?

A. Yes, sir.

By Mr. KINGSBURY:

Q. Does this statement show all the coal transported by canal?

A. Yes, sir. That is the total.

By Mr. COUDERT:

Q. Does it show it separated?

A. Yes. It is not an itemized statement of each year separately. Those are the shipments for each year.

Government's counsel offered in evidence statement produced by the witness (marked "**Exhibit 49**"), as follows:

LEHIGH COAL AND NAVIGATION COMPANY.

Shipments.

Destination.	1911	1912	1913
1. L. & S. Div. C. R. R. (local)	551,213.10	477,874.08	695,526.03
2. C. R. R. of N. J. (local)	462,714.00	528,109.00	491,695.12
3. C. R. R. of N. J. (tide)	1,148,668.03	940,287.01	899,192.19
4. P. R. R. Bel. Del. Div. C. R. R.	182,790.10	269,411.12	79,779.06
5. Lehigh & Hudson Riv. Ry., C. R. R.	15,863.02	6,491.17	3,471.07
6. Coalport for Canal, C. R. R.	320,736.03	218,803.10	230,031.00
7. N. Y., N. H. & H. R. R. via C. R. R., C. R. R.	118,851.05	76,971.10	3,144.10
8. C. N. E. R. R. via L. & N. E., C. R. R.	26,584.02	19,567.18	881.15
9. Walkill Valley via L. & N. E., C. R. R.	6,342.04	2,951.15	 520
10. West Shore via L. & N. E., C. R. R.	2,355.05	989.18	.....
11. Erie R. R. via L. & N. E. & Goshen, C. R. R.	8,773.07	8,270.00	.....
12. L. & N. E. R. R., C. R. R.	36,823.00	24,067.11	.....
13. P. & R. R. R. local via Tamaqua	481,879.13	421,245.17	249,809.05
14. P. & R. R. R. Pt. Richmond	68,213.15	57,202.15	43,005.06
15. P. & R. R. R. Nth. Penn. via Hauto	658.12	655.17	478.13
16. P. & R. R. R. E. Penn. via Hauto	310.00	7,037.05	8,884.18
17. Retail at mines	61,291.08	78,005.02	36,305.18
18. Locomotive coal	21,163.12	21,963.07	21,523.07
19. Shops, power house, and collieries	58,994.07	107,862.09	119,304.17
20. Undercliff via L. & N. E.	.....	153,613.08	217,114.14
21. L. & N. E. R. R.	.....	40,311.04	78,142.05
22. West Shore via L. & N. E.	.....	7,840.15	18,875.10
23. B. & M. R. R. via L. & N. E.	.....	27,593.10	60,987.07
24. B. & A. R. R via L. & N. E.	.....	6,031.09	15,927.18
25. Erie R. R. via L. & N. E. and Goshen	.....	862.08	464.04
26. C. N. E. R. R. via L. & N. E.	.....	14,912.04	28,564.06
27. N. Y., N. H. & H. R. R. via L. & N. E.	.....	44,016.15	124,350.01
28. N. Y. C. & H. R. R. via L. & N. E.	.....	76.00	10,219.14
29. P. R. R. via L. & N. E., Martins Creek	.....	.....	71,939.05
30. Lehigh Valley via L. & N. E.	.....	.....	66,164.14
	3,574,225.18	3,563,036.05	3,584,784.16

The totals above given cover calendar years.

Counsel for the Lehigh Coal and Navigation Company, in pursu- 521
ance of the request of counsel for the Government at the last hearing, produces statement by the secretary of the Lehigh Coal and Navigation Company, showing first the total acreage of anthracite-bearing lands leased by the Lehigh Coal and Navigation Company to other parties as lessees (marked "**Exhibit 50**"):

Maryd Coal Co., per agreement of June 25, 1903, pamphlet copy attached	863
Tenants at will:	
Est. of C. S. Shindel, lease Jan. 9, 1907	47
Moses Neyer, lease Nov. 20, 1903	43
	953

Second, copies of the eighth covenants in the leases above named relative to the shipment of the output of such lessees.

The lease from the Lehigh Coal and Navigation Company to the Maryd Coal Company, dated June 25, 1903:

Eighth. The lessee shall and will ship all the coal that shall be mined from the demised premises in cars furnished by the Central Railroad Company of New Jersey, and so consign it as to reach its destination either by the canal of The Lehigh Coal and Navigation Company or by railroads owned, leased, or controlled by the said Central Railroad Company of New Jersey, or if such coal be destined for points not reached by said canal or by railroads owned, leased, or controlled by said Central Railroad Company of New Jersey, it shall be shipped as far as possible over such railroads. And this demise is expressly made upon the condition that such coal shall and will be so shipped. Provided, however, that the lessee shall have the
[1]522 right to ship, without additional charge for the privilege, one-fourth,
523 and no more, of the coal mined from the demised premises by other routes than those above designated, so far as shall, in the opinion of the president of the Lehigh Coal and Navigation Company, be permitted by the contracts now in force between the Central Railroad Company of New Jersey, The Lehigh Coal and Navigation Company, and the Alliance Mining Company.

Lease to estate of C. S. Shindel, dated January 9, 1907, containing the following clause:

The lessee to ship all coal mined and shipped by railroad from the said demised premises, in the cars of ——— ——— Company, or in cars which reach their destination exclusively by railroads owned, leased, or controlled by the said ——— Company.

Lease of the Lehigh Coal and Navigation Company to Moses Neyer, dated November 20, 1903, contains the following clause:

The lessee to ship all coal mined and shipped by railroad from the said demised premises, in the cars of C. R. R. Co. of N. J. Company, or in cars which reach their destination exclusively by railroads owned, leased, or controlled by the said C. R. R. Co. of New Jersey Company.

524 Third, the approximate total output from the lands so held under lease during the five years ending with 1913, was one million tons.

Mr. Drinker, in pursuance of request of counsel for Government at the last hearing, produced statement of coal purchased for the Lehigh Coal and Navigation Company during the years 1910, 1911, 1912, and 1913, by the general coal agent of the Lehigh Coal and Navigation Company, as follows:

Purchased coal.

Tonnage year—	
1910	206.18
1911	49,335.15
1912	121,913.17
1913	22,430.03
Total	193,886.13

[1] So numbered in original.

By Mr. KINGSBURY:

Q. In finding a market for the Lehigh Coal and Navigation Company, has that company tried to obtain through rates on anthracite coal via the Philadelphia and Reading Railway to Harrisburg and thence to western points?

A. The only effort that we have made by way of Harrisburg has been to get a proportion of the existing rate to Harrisburg of ninety-five cents, a similar proportion as was allowed on other Reading shipments that went out by way of Tamaqua. We were not able to get any proportion of that rate. [1525]

Q. Did you confer with any officials of the Reading Railway Company in the matter?

A. I conferred several times with Mr. Crosley.

Q. You requested him to name such a rate?

A. I requested him for a proportion of the rate.

Q. What did he do?

A. That was refused.

Q. Repeatedly?

A. Yes. I suppose two or three times.

Q. Did he state any reason for his refusal?

A. I recall that the general reason was that the rate was a low one and would not stand any division.

Q. Did he say anything about the Reading Company's not being ready to open up the western territory to you?

A. Not specifically.

Q. To refresh your recollection I read to you an answer which you are reported in the stenographer's minutes as having given in the Interstate Commerce Commission proceeding, docket No. 4914, in response to the following question, "What reason did Mr. Crosley give for declining to name the through interline rate to take care of your coal?" Answer, by Mr. Davies, "I do not know that he gave any particular reason, excepting that they were not ready to open up that western territory to us. I do not recall any other reason." Does this refresh your recollection?

A. I think that Mr. Crosley made a statement of that sort. I can [1525] not give the exact language, but that was the general impression that I got.

By Mr. COUDERT:

Q. And you so stated in that proceeding?

A. Yes. That is my memory.

By Mr. KINGSBURY:

Q. Is it the fact that the Lehigh Coal and Navigation Company operates the Lehigh and New England Railroad?

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[1] So numbered in original.

A. No, sir.

Q. In the same proceeding, you gave the following answer:

Q. (By Mr. REYNOLDS.) Mr. Davies, you now have through rates to the West, have you not?

Mr. DAVIES. Yes, sir.

Examiner SMITH: Via what line?

Mr. DAVIES. The Lehigh Valley—a connection with the Lehigh Valley and the Lehigh and New England Railroad, which we operate.

A. The Lehigh and New England road is all that I said. I am positive that I did not add those words, because they were not in answer to any question, and it is not the fact.

Q. That is an error of the stenographer?

A. That is an error of the stenographer.

By Mr. COUDERT:

Q. Who does operate that road, if you know?

A. My general knowledge is that the Lehigh and New England Railroad is operated by its officials. That is all I know about it.

526 Q. Is it not possible that you merely had in your mind the fact that the Lehigh Coal and Navigation Company, by reason of its ownership of stock and practical control of that railroad, in that sense at least operated it? Is not that what you had in your mind?

A. I might have had that in my mind. But, not having made the statement, I ought not to be held responsible for it.

Q. You think the stenographer was mistaken in putting that in?

A. I am sure he was, because I would not make such a statement, knowing it was operated by its own officials, and entirely free from anything that I had knowledge of or to do with.

Cross-examination by Mr. REYNOLDS:

Q. In testifying as to your recollection as to the reasons which the Philadelphia and Reading Railway Company gave as to not putting in a rate to Harrisburg, as to what period are you testifying; that is, when does your recollection place the conversation?

A. From the beginning, just prior to the time we made shipments over that road, first for account of the Lehigh Valley and afterwards the Susquehanna Coal Company—coal sold to them.

Q. That is about the time the Philadelphia and Reading put in the Harrisburg tariff?

527 A. I do not know when the tariff was put in. I have a copy of it. That was in existence and they permitted us to ship to Harrisburg on that tariff, with the understanding in the beginning that there should be but twelve thousand tons go out that way.

Q. Then that conversation, to your recollection, as to the reason given, is after that tariff was in?

A. Yes.

Q. That tariff was P. and R. tariff 296A, put in effect April, 1909, was it not?

A. That I could not testify to. I could produce a copy of the original tariff which was given us. It was not a printed tariff. It was a typewritten yellow sheet tariff.

Q. After refreshing your recollection by reading from docket 4914, can you say that they used P. and R. tariff 296A?

A. I should rather go to my own files of record. We had no general Reading tariffs until about that time into that territory.

By Mr. COUDERT:

Q. Your recollection is that the tariff about which you were speaking is the tariff of 1909, to which Mr. Reynolds referred, and you will look it up?

A. It is entirely different from any tariff we had from the Reading.

By Mr. REYNOLDS:

Q. I show you a letter which purports to be a copy of one from you to Mr. Wilbur, dated October 25, 1909, to refresh your recollection. 528

[Letter shown witness.]

A. I recall that.

Q. Do you recall writing that letter?

A. I do.

Q. You recall that that letter was written subsequently to the tariff from Tamaqua to Harrisburg of the P. and R., naming ninety-five cents as a proportional rate?

A. Written subsequently; yes, sir.

Q. It refers to the existence of the prior tariff?

A. Yes, sir.

Q. From Tamaqua to Harrisburg?

A. Yes, sir.

Q. That made a proportional rate on coal shipped from Tamaqua by the Lehigh Coal and Navigation Company to and via Harrisburg of ninety-five cents, did it not?

A. Yes, sir.

Q. And you so said in this letter to Mr. Wilbur?

A. Yes, sir.

Q. At that time the Pennsylvania Railroad Company had in effect, according to your letter here I. C. C. A. No. 1416, naming a rate via Pittsburgh, Fort Wayne, and Chicago from Harrisburg on anthracite of $2.55; is that right?

A. Yes.

Q. That was in effect?

A. I must have had that tariff before me to have made that statement in the letter, and I probably did.

529 Q. That gave you a total of $3.50 as a through rate from Tamaqua to Chicago for your coal, did it not?

A. It did and is so stated in my letter.

Q. How long did you have that rate of $3.50 from Tamaqua to Chicago available to you?

A. I assume it is available now. I do not know that it has been withdrawn.

Q. At any rate you think it has been in effect since 1909?

A. I believe it has.

Q. What is the rate, if you know, and do not answer if you do not know, generally from the anthracite coal regions to Chicago by most of the road lines?

A. I only know from hearsay that it is $3.50. That is the rate.

Q. So that at the time of which you are testifying that among the reasons given to you by Mr. Crosley was one to the effect that not the railway but the coal company did not want you to go West, Mr. Crosley gave you the benefit of a combination of rates which permitted that shipment from Tamaqua, Pennsylvania, in the Panther Creek region, to Chicago, for $3.50; that is true, is it not?

A. Yes.

Q. In this letter you state that the Reading did not want to issue this tariff because their proportion of the rate is so very small. Was that stated to you as a reason?

530 A. As a reason. The ninety-five cent rate was too small to permit of a division.

Q. You did not mean to say that it was the Reading's position that if they got all of the ninety-five cents for hauling coal from Tamaqua, the eastern end of their rails, to Harrisburg, the western end of their rails on that branch, for ninety-five cents, they were dissatisfied? That was not their position, was it?

A. I do not know anything about that.

Q. What did you mean by this answer about division then?

A. What I meant by that was that we were to receive a division on all other business that went over their rails, and we thought we ought to have a proportion of the ninety-five cent rate if we gave them tonnage. That was the reason.

Q. Then there was some talk at that time, was there, about an issue of that kind that you, the Lehigh Coal and Navigation Company, did not want to pay a full ninety-five cents from the shipping point, Tamaqua, to Harrisburg, and if you did, you thought you ought to have some of that ninety-five cents paid back to you because of your lateral service in the Panther Creek region?

A. Exactly.

Q. How much did you ask for at that time?

A. I might say, in a general way, that we asked for the same division that we had on coal going into the Reading territory generally—local territory.

531

Q. What was that division?

A. It is twenty-five cents a ton on their tariffs.

Q. On the State business they made you an allowance of twenty-five cents out of whatever the rate was?

A. Yes.

Q. Were you careful to restrict that allowance to business moving within the State?

A. Yes. Their tariffs only allow for shipment within the State. That is why I thought that the tariff to Harrisburg, within the State, we should be entitled to the same allowance on, because we did not know what was going to be done with the coal beyond that point positively.

Q. Then, the upshot of the matter was that you got the tariff to Harrisburg which enabled you to go West, but the Reading did not give you twenty-five cents out of their share of the rate to Harrisburg from Tamaqua?

A. They did not give us anything.

Q. They did not give you a cent?

A. No, sir.

Q. And would not?

A. And wouldn't.

By Mr. COUDERT:

Q. Does any of your coal go that way now?

A. No. None since, I think, 1912. I think there was some went out.

532

Q. That way?

A. Yes.

Q. But none since?

A. No. We just stood the loss.

By Mr. REYNOLDS:

Q. But you got the same rate from Tamaqua to Chicago that everybody else in the coal region got from shipping points to Chicago?

A. I assume so; yes, sir.

Q. I show you copy of a letter dated April 7th, 1913, purporting to be written by you to Vice President Wilbur to refresh your recollection. [Letter shown witness.]

A. I remember that letter. I wrote that.

Q. Do you remember writing that letter?

A. I do.

Q. Was it then, on April 7th 1913, and is it now true that for some reason or other you thought it best not to enter the western territory for direct sale of your product?

A. Yes.

Q. That is what you thought?

A. I thought so. Because we had established a connection with a selling house in the West, who were going to take care of the business on a moderate commission as a beginning.

Q. So that your coal was moving freely to the West and you were not extending with an agency and selling force of your own?

533 A. That is the idea; yes.

Q. As a salesman you have always been able to sell coal in this territory, have you not?

A. I have been fairly successful.

Q. You have been fairly successful, have you not?

A. Yes, sir; I think so.

Q. Are you not probably the most successful coal sales agent in the East?

A. I think not.

Q. Who is?

A. I do not know who the other man is.

Q. I show you a copy of a letter purporting to be written by E. B. Crosley, under date of April 22, 1909, to you. That date was just at the time the tariff was put in, you will recall—is that true?

A. Yes. I remember receiving that letter very well.

Q. In that letter it is stated that the arrangement was made for the shipment of twelve thousand tons which you had sold to the Susquehanna Coal Company?

A. Yes.

Q. That was the fact, was it not?

A. Yes.

Q. You have a sufficiently distinct recollection of the contents of that letter to say that that represents the facts as they existed at that time?

534 A. Yes.

Q. In a general way is that a repetition of the conversation which it purports to confirm?

A. I think it is.

The letter is as follows:

PHILADELPHIA & READING RAILWAY CO.,
OFFICE OF THE COAL FREIGHT AGENT,
Reading Terminal, Philadelphia, April 22nd, 1909.

Mr. R. T. DAVIES,
G. C. A. Lehigh Coal & Navigation Co., Philadelphia, Penna.

DEAR SIR: Referring to conversation of to-day, I beg to confirm that arrangements have been made whereby we will accept for transportation to Milton at the rate of 95 cents per gross ton from Tamaqua, the unshipped portion of the 12,000 tons of coal which you advise have been sold to the Susquehanna Coal Co. We understand from

you that probably 1,800 or 2,000 tons have already been shipped via Harrisburg.

Also confirming conversation, I would say, that our transportation department have consented to this arrangement with some hesitancy on account of the heavy grades and the limited facilities at our Milton yards, involving a considerable extra expense, as compared with the movement to Harrisburg. The desire of our management being to comply, as far as possible, with the wishes of your company 535
and the Susquehanna Coal Co. they finally consented to accept this particular shipment on the assurance that same would not be considered as a precedent for the future.

Trusting that the arrangement will be satisfactory, I remain,

Yours very truly,

(Signed) E. B. CROSLEY,
Coal Freight Agent.

Q. Was there ever in any of the correspondence or conversations between yourself and the officials of the Reading Company a discussion as to whether the Reading could legally on an interstate shipment give the Lehigh Coal and Navigation Company any allowance out of the through rate interstate?

A. I am not entirely clear on that. I am not clear as to that.

Q. Do you have a recollection that that question was discussed?

A. If there was any correspondence showing it it would refresh my recollection. I do not recall anything absolutely as to that. I think that might well have been the case.

Q. Do you remember discussing the matter with Mr. Wilbur, the vice president of your company?

A. I do not recall that unless my memory was refreshed.

Q. Do you remember his showing you any letter on that particular feature of the question?

A. I do not remember it; no. 536

Q. Do you remember referring the question to your counsel as to whether it would be legal for the L. C. and N. Company?

A. I do not recall it, I am perfectly frank.

Q. You do not recall any such discussion?

A. No; I do not recall the discussion.

Redirect examination by Mr. COUDERT.

Q. Why was it that the Reading limited you to twelve thousand tons shipment to the West?

A. I do not know that there was any special reason, excepting that we may have asked to ship twelve thousand tons out at that time.

Q. I understood you to say that you had some arrangement by which they allowed you to ship only twelve thousand tons?

A. We asked them if we could ship a tonnage of coal, they wanted to know how much it was, and we said twelve thousand tons. That was afterwards very considerably increased.

Q. So that whenever you wanted to increase that tonnage, you had to get their permission?

A. No. We kept on shipping—as I understand it, afterwards we made sales in considerable volume, and it went out without objection.

537 Q. Even in excess of the twelve thousand tons?

A. Yes, sir.

Q. How was that arrangement about the twelve thousand tons made? Was it done in correspondence, or just you and Mr. Crosley orally?

A. It might have been either. I do not recall. There is a letter there referring to it.

Q. Is there any other reference to that?

A. I do not know of any.

Q. On what ground, as you understand it, was the Reading able so far to control your shipments as to tell you how much you should ship and how much you should not?

A. I do not think there was any effort to control that at all, because in 1911 I think we shipped 150,000 tons possibly, or upward.

Q. Without getting any proportional allowance?

A. Without getting any proportional allowance.

Q. That also all passed through Harrisburg?

A. That all passed through the same avenue.

Q. How long was that subsequently to the 12,000 tons you had been limited to originally?

A. That followed soon after. I think in 1910 we made deliveries and 1911 and in 1912.

Q. Who was it limited you to the twelve thousand tons?

A. It was in conversation and our correspondence. I think that was the specific tonnage we wanted to ship out, and they agreed to its going forward.

538 Q. How could they have refused it?

A. I do not know.

Q. You do not know of any way in which they could have refused it?

A. No.

Q. Except to say to you, "We won't take it?"

A. That is all.

Q. But you evidently thought they might refuse it?

A. I think, as Mr. Reynolds states, that letter is quite specific on that.

Q. I want to know what was on your mind about it. You asked them, for some reason or other, to take a limited amount, and they assented to that limitation. What possible right did they have to limit your shipment, an independent company's shipment?

A. That is a question beyond me.
Q. You did not know of any?
A. No.
Q. And you were simply acquiescent in the situation?
A. Yes.
Q. Which you knew to exist?
A. Yes.
Q. You spoke of a connection to the west other than by the Harrisburg route, did I understand you rightly?
A. Yes.
Q. What was that? 539
A. The Lehigh Valley connection. Do you refer now to the later connection to the West?
Q. Yes.
A. No; that was the Lehigh Valley at Lizard Creek Junction.
Q. Do the figures that you have put in show what proportion of your coal went to the West?
A. All of the coal under, I think it is, practically the last item on the statement shows that.

By Mr. KINGSBURY:

Q. That is all that goes to the West?
A. That is all that went after the opening of that avenue.

By Mr. DRINKER:

Q. What month was that opened in?
A. I do not recall. It was in 1913.
Q. What month in 1913?
A. It was the middle or the latter part of the year. There are no tonnages shown as going out that way. Any tonnage in 1911 and 1912 that went west went as P. and R. local via Tamaqua and is included in these tonnages.

By Mr. KINGSBURY:

Q. Have you any idea what proportion of this tonnage under item 13, P. and R., via Tamaqua, went west?
A. I can not give you that.
Q. Can you give it roughly, approximate percentages?
A. We had a contract in the year 1911 for, say, 150,000 tons. Some 540 of it ran over into 1912, but no shipments were made after the first of April.

By Mr. COUDERT:

Q. Do you remember why?
A. Because price conditions were so exceptional, and getting no return from the service performed by the Panther Creek road.
Q. Getting no lateral allowance for the Panther Creek?
A. Getting no lateral allowance.

Q. After that date?

A. It made it more or less attractive to us, because the tonnages were all moving freely through better paying avenues, so we made no further contract for the movement of coal in that way.

By Mr. KINGSBURY:

Q. In one of the letters which Mr. Reynolds showed you to refresh your memory the following appears: "The Reading stipulate, however, that this coal must be consigned to the care of the Pennsylvania Railroad, Harrisburg, Pennsylvania, and not to the Lehigh Valley Coal Company, Chicago." Do you remember what was the reason for that stipulation, if any?

A. I do not recall what it was. I think that it had something to do with that interstate matter that Mr. Reynolds referred to. That is my recollection.

541 By Mr. COUDERT:

Q. Some lateral allowance that you got one way and did not get the other?

A. We got no lateral allowance, but they stipulated that the coal should go consigned in that way. In other words, the delivery of the coal was complete, so far as we were concerned, when it reached Harrisburg or Milton.

Q. Within the State of Pennsylvania?

A. Yes, sir.

Recross-examination by Mr. REYNOLDS:

Q. Your original request of the Reading was a specific one, to put in tariffs to ship 12,000 tons, was it not?

A. I do not think I asked him to put in the tariff at all. I asked him for the mere shipment of 12,000 tons.

Q. You asked for facilities to ship 12,000 tons?

A. Yes.

Q. The tariff was put in?

A. The tariff was issued to us.

Q. Since then you have shipped whenever you have sold coal in the West?

A. Whenever we wanted to ship in that way and lose the lateral.

Q. In answer to one of Mr. Coudert's questions, you said you had ceased to ship in that way because you had facilities of shipping
542 through better paying avenues?

A. I was referring to a specific time in 1912, when the tonnages were as the result of the approaching strike, we were sending our coals to markets that we did not have to observe laterals, and got a better mine return on our product. Therefore, we shut off that western business, and it was not renewed through that avenue.

Q. Did you not ship via the Lehigh Valley?

A. None at all until late in 1913, when that new connection was opened to us.

Q. The Lehigh Valley divided the rate with the Lehigh and New England, did they not?

A. That I can not pass on. I do not know anything about it.

Q. Then how do you know that you have to observe the lateral in one case and not in the other, if you do not know about it?

A. I should naturally assume that the Lehigh and New England road would not do that business for nothing. That is my assumption.

Q. So you shipped it via the Lehigh and New England and Lehigh Valley on the assumption that the L. and N. E. gets a lateral that way, and you know that the L. and N. E. does not get a lateral via Tamaqua to points outside the State of Pennsylvania; is that right?

A. I assume that is it.

Q. That is the assumption on which you have made the prior statements?

A. Yes, sir. 543

By Mr. COUDERT:

Q. That coal that went to the west over the Philadelphia and Reading via Harrisburg, where does it go now; where do you ship that coal to now?

A. We distribute it through different other avenues.

Q. It does not go to the west at all; it goes to New England and elsewhere?

A. It may. It is part of our total tonnage.

Q. Over what roads does it travel mainly?

A. I don't know the Lehigh Valley connections; I do not know anything after our connection with them.

Q. It goes largely over the Lehigh now?

A. The distribution of our coal through New England and elsewhere is shown, and the tonnage west is building up.

By Mr. REYNOLDS:

Q. Since you have had this western outlet via the Lehigh Valley, have you expanded your western business?

A. We show in the latter part of last year 66,000 tons for the portion of the year when it was a new venture.

Mr. REYNOLDS. At the last session counsel for the Central Railroad Company of New Jersey was asked to state whether the leases of coal facilities on that railroad to coal dealers were generally on the basis of an underlying covenant that the lessee should give preference to the 544
Lehigh and Wilkes-Barre Coal Company, or covenants of that nature, in respect to other shippers on the lines of the railroad.

Counsel for the Central Railroad Company of New Jersey, in response to that question, state that in answer to question No. 16, in I. C. C. docket 4914, we were required to file with the Interstate Commerce Commission copies of all contracts, leases, and agreements with reference to trestle, shed, wharf, dock, scales, coal-stocking plant, coal-storage plant, coal pocket, bin, building and office space (including land as sites for the said properties), owned by the C. R. R. of N. J. and used incident to the transportation, handling, or sale of anthracite coal during the year ended June 30, 1912. In compliance with that request I so filed with the commission all such documents. I have here a collection of the same, totaling fifty-six in number. Of those fifty-six, thirty-nine have no provision whatever as to the routing of coal. Eight have a provision *mutatis mutandis* in the following form, that all coal shipped to or from said demised premises and handled thereon and thereat shall be shipped over the railroad lines of the party of the first part and their connections.

Six have a clause substantially as follows: That all coal and supplies shipped to or from such demised premises, and handled thereat so far as the lessee can control the routing thereof from or to points on or reached via the railroad lines of the lessor, shall be shipped over
545 such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similar service, and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

There are three slightly variant routing clauses, or the variation is nonessential, and it does not vary sufficient to encumber the record. I hand the three variant ones to the counsel for the Government.

So that the only lease of the entire system that provides for purchase and shipment of Lehigh and Wilkes-Barre coal is the lease to the Burns Brothers. The history of that particular clause I am entirely familiar with through legal proceedings, and I would like to make a statement with respect to that, if counsel are willing.

Just prior to the time the Burns Brothers' lease was made, Burns Brothers purchased several small properties in Jersey City, some of them in fee, and some leasehold interests. Among those purchased were three or four on the property of the Jersey Central, namely, the Communipaw coal pier and pockets, the Manhattan trestle, the Hudson trestle, and the Waddell pocket. After those purchases, Mr. Michael Burns, the president of that company, had a meeting with me to see if he would be able to get the same terms under those
546 leases as the prior tenants had for a future term, and it was agreed that he would have leases renewed upon the same terms, and that explains the reference to the Lehigh and Wilkes-Barre Coal Company in the Communipaw pocket or pier which was leased to the Communi-

paw Coal Company. The history of that lease was that it was originally made in 1882, when the Central Railroad Company of New Jersey was in the hands of a receiver of the Court of Chancery of New Jersey, and I hand the examiner a printed copy of the order permitting the execution of that original lease, bearing date October 1st, 1882. In that lease was this original clause in practically the terms of the present lease, to the effect that they should purchase coal from the Lehigh and Wilkes-Barre Coal Company, giving preference to them on equal terms, and so forth.

During the receivership of the Federal court in 1887 that lease still continued and was approved over and over again in the settlement of accounts by the receivers and by the court. I have voluminous documents supporting that statement here. The intermediate leases simply reiterated that clause. The last lease, which was made in 1900 and expired just before the Burns Brothers' lease was made in 1910, had this clause in it, "and covenants not to receive or handle upon the aforesaid leased premises any coal which has not been transported thereto upon the lines of the said railroad company, the Central Railroad Company of New Jersey, from points north and west of Mauch Chunk," and the affirmative covenant to purchase all coal 547
transported by the railroad company to the said premises from the persons or corporations shipping the same over the lines of the railroad company from points north or west of Mauch Chunk, giving preference, however, on equal terms to coal furnished by the Lehigh and Wilkes-Barre Coal Company.

Under my understanding with Mr. Burns, and his with me, we simply put into the new lease the clause which had come up from 1882 through the various receiverships, and approved by the courts of the State and Federal courts, as a matter of form. That is all there was as to that clause.

Counsel for the Government accept the statement of Mr. Reynolds in regard to the contents of the leases in lieu of the leases themselves, subject to examination and correction.

Printed copy of order in Chancery Court of New Jersey referred to by Mr. Reynolds in his statement is as follows:

In Chancery of New Jersey.

Between
The Lehigh Coal and Navigation Company, Complainants,
and
The Central Railroad Company of New Jersey, Defendants.

Order modifying injunction so as to permit C. R. R. Co. of N. J. to 548
execute contract with the Communipaw Coal Co.

Henry S. Little, president of the Central Railroad Company of New Jersey, having presented to this court the proposed contract

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between said company, and the Communipaw Coal Company, dated October 1, 1882, and having represented that it is, in the opinion of the directors of said company, expedient that the company may be permitted to execute said contract for the purpose of obtaining the increased revenues to be derived from the transportation of coal thereunder, it is on this tenth day of October, 1882,

Ordered, That the injunction now existing against the said company be, and hereby is, so far modified and relaxed as to permit the said company, in the discretion of its board of directors, to execute and perform the same upon its own responsibility and credit.

The permission hereby granted, however, shall not be deemed to impose any additional liabilities upon the receiver, or upon the trust property in his possession, but the said receiver, so long as he shall continue to receive the freight moneys for the transportation of coal under said agreement, shall execute said contract so far as respects the transportation of coal thereunder, furnishing the facilities therein referred to, and paying the accruing interest and principal of said indebtedness, so far and so far only as the net revenues received by
549 him for the transportation of coal thereunder will permit.

(Signed) THEODORE RUNYON.
C.

Counsel for the Government offered in evidence printed **Annual Report of the Central Railroad Company of New Jersey** for the fiscal year ended June 30, 1913.

Also **Annual Report of the Board of Directors of the Lehigh and Wilkes-Barre Coal Company** for the year ended June 30, 1913.

Also the **Sixteenth Annual Report of the Reading Company** for the year ended June 30, 1913, including the reports of the Philadelphia and Reading Coal and Iron Company and the Philadelphia and Reading Railroad Company.

The **Thirty-first Annual Report of the Board of Directors of the Lehigh and Hudson River Railroad Company** for the year ended June 30, 1913.

The **Nineteenth Annual Report of the Board of Directors of the Lehigh and New England Railroad Company** for the year ended June 30, 1913.

The **Ninety-third Annual Report of the Board of Managers of the Lehigh Coal and Navigation Company** for the year ended December 31, 1913.

Counsel for the Government states that they will indicate at the next session portions of these reports they wish spread upon the record.

550 Counsel for the Government offered in evidence statement furnished by the Central Railroad Company of New Jersey, under date February 13, 1904, showing the gross tons of anthracite moved by seagoing tugs and barges for four years ended June 30, 1912, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Statement showing gross tons of anthracite moved by sea tugs and barges for four years ended June 30, 1912.

Month & year.	Tons.	Month & year.	Tons.
1908.		1910.	
July	29,085	July	18,840
August	35,024	August	21,595
September	21,725	September	21,726
October	35,425	October	29,507
November	24,128	November	28,877
December	32,145	December	25,132
1909.		1911.	
January	17,868	January	27,461
February	17,683	February	27,098
March	35,315	March	31,349
April	30,204	April	24,112
May	23,565	May	28,126
June	24,170	June	32,353
	326,327		316,176
1909.		1911.	
July	23,448	July	37,939
August	20,810	August	21,434
September	22,139	September	24,249
October	25,972	October	21,682
November	25,379	November	26,113
December	20,100	December	35,074
1910.		1912.	
January	27,209	January	22,270
February	24,710	February	24,956
March	34,990	March	24,381
April	21,216	April	29,825
May	22,396	May	7,783
June	25,787	June	29,665
	297,156		305,371

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SUMMARY.

Year ended June 30—	Gross tons.
1909	326,327
1910	297,156
1911	316,176
1912	305,371
Total	1,245,030
Average per year	311,257

Counsel for Government also offered in evidence statement furnished by counsel for the Lehigh & Wilkes-Barre Coal Company showing routes and delivering lines over which its product reached market or destination during the years 1901 and 1913, as follows: 552

STATEMENT A.

LEHIGH & WILKES-BARRE COAL COMPANY.

Statement showing routes and delivering lines over which its product reached market or destination during the years 1901 and 1913.

Routes.	Tonnage, year 1901.	Tonnage, year 1913.
Sold at mines	122,232	228,991
Lehigh Valley R. R	139,651	367
D. L. & W. R. R	9,979	.....
Erie R. R	18,287	.....

STATEMENT A—Continued.

LEHIGH & WILKES-BARRE COAL COMPANY—Continued.

Statement showing routes and delivering lines over which its product reached market or destination during the years 1901 and 1913—Continued.

	Routes.	Tonnage, year 1901.	Tonnage, year 191
	Central R. R. Co. of N. J.:		
	L. & S. Division	76,283	134,6
	Central Division	293,843	470,9
	Central Division, Newark, N. J.	158,059	186,0
	Central Division, Jersey City for New York City	542,396	568,0
	F. & A. H. Division	9,028	9,4
	N. J. Southern Division	33,231	36,4
	New York & Long Branch R. R	9,508	31,5
	C. R. R. Co. of N. J. supply coal	521,572	823,4
553	C. R. R. of N. J. and Phila. & Reading R. R	426	2,0
	" and D. L. & W. R. R	343	
	" and Lehigh & New England R. R	629	6
	" and L. & H. Ry. (Local)	2,624	3,4
	" L. & H. and West Shore R. R	11,087	
	" L. & H. and C. N. E. R. R	15,134	23,2
	" L. & H. and Erie R. R	91	1
	" L. & H., C. N. E., and N. Y. C. & H. R. R. R	1,029	
	" L. & H., C. N. E., and N. Y. N. H. & H. R	10,847	366,5
	" and Penna. R. R. (Bel. Del.)	100,431	18,1
	" and Penna. R. R. (Oak Island Jct.)	88,020	155,5
	" and Rockaway Valley R. R. (N. J. & Pa. R. R.)	2,133	4,1
	" and Staten Island R. T. Ry	7,951	12,6
	" and Atlantic City R. R	1,663	
	" and Tuckerton R. R	468	4
	" and Rahway Valley R. R	99	10,9
	" and Raritan River R. R		6,0
	" and West Shore R. R. (Local)	9,286	11,2
	" West Shore and N. Y. C. & H. R. R. R		53,3
	" West Shore and B. & M. R. R		62,7
	" West Shore and B. & A. R. R		106,8
	" West Shore, B. & A. R. R., and Rutland R. R		4,0
	" and N. Y., N. H. & H. R. R	46,980	6
554	" and N. Y. C. & H. R. R. R	5,927	26,9
	" and Long Island R. R	85,318	318,5
	" and Floats to Brooklyn	128,516	7,7
	" and Floats to New York City	1,021	
	C. R. R. of N. J. to tidewater for reshipment by water—		
	From Port Johnston and E'port Docks	1,451,794	1,246,5
	From Boston and Salem, Mass	171,416	86,7
	Total	4,077,302	5,018,7

Counsel for Government offered in evidence statement furnished by Lehigh & Wilkes-Barre Coal Company showing routes and markets in which its product was principally disposed of during the year 1901 and the year 1913, together with a letter of explanation by the comptroller of the Lehigh and Wilkes-Barre Coal Company, as follows:

STATEMENT B.

LEHIGH & WILKES-BARRE COAL COMPANY.

Statement showing routes and markets in which its production was principally disposed of during the year 1901 and the year 1913.

	Tonnage, year 1901.	Tonnage, year 1913.
Retailed at mines:		
Audenried, Pa.	3,068	3,721
Wilkes-Barre, Pa.	119,164	225,269
Total.	122,232	228,990
Via Lehigh Valley R. R.:		
Sundry points.	139,651	367
Via D., L. & W. R. R.:		
Sundry points.	9,979	.....
Via Erie and Wyoming Valley Railroad:		
Sundry points.	18,287	.....
To points on C. R. R. of N. J. System.		
L. & S. Division and branches:		
Allentown, Pa.	3,474	5,922
Catasauqua, Pa.	17,994	5,472
Hazard, Pa.	2,165	100,125
Laurel Run, Pa.	5,779	239
Northampton, Pa.	37,946	39
Parryville, Pa.	1,027	13,172
Wilkes-Barre, Pa.	1,653	3,478
Sundry points.	3,245	6,140
Total.	76,283	134,607
Central Division and branches:		
Bound Brook, N. J.	6,640	8,726
Bayonne, N. J.	53,253	62,893
Cranford, N. J.	2,104	1,818
Chrome, N. J.	.....	28,996
Carteret, N. J.	3,386	6,070
Dover, N. J.	4,880	9,988
Elizabeth, N. J.	78,385	103,184
Flemington, N. J.	1,430	3,112
Grasselli, N. J.	.....	66,408
Hampton, N. J.	1,615	3,677
High Bridge, N. J.	3,255	10,555
Jersey City, N. J.	19,475	34,994
Jersey City tide yards, N. J. (for New York City market).	542,396	568,014
Newark, N. J.	158,059	186,025
Plainfield, N. J.	17,846	15,110
Perth Amboy, N. J.	8,351	75,228
Port Oram (Wharton), N. J.	45,186	3,595
Roselle, N. J.	3,029	8,228
Raritan, N. J.	12,121	303
Somerville, N. J.	1,079	5,819
Sewaren, N. J.	6,613	.....
Tremley, N. J.	4,147	.....
Westfield, N. J.	6,631	11,435
Sundry points, N. J.	14,417	10,702
Total.	994,298	1,224,880
F. & A. H. Division and branches:		
Atlantic Highlands, N. J.	5,618	1,929
Keyport, N. J.	968	3,757
Sundry points, N. J.	2,442	3,810
Total.	9,028	9,496
N. J. Southern Division and branches:		
Lakewood, N. J.	16,753	15,372
Long Branch, N. J.	6,248	8,483
Sundry points.	10,230	12,582
Total.	33,231	36,437

	Tonnage, year 1901.	Tonnage, year 1913.
To points on C. R. R. of N. J. System—Continued.		
New York and Long Branch R. R.:		
Asbury Park, N. J.	.....	17,880
Long Branch, N. J.	5,554	4,562
Sundry points.	3,954	9,107
Total.	9,508	31,549
C. R. R. Co. of N. J. supply coal.	521,572	823,894
Via C. R. R. of N. J., Bethlehem, and P. & R. R. R.:		
Sundry points.	426	2,062
Via C. R. R. of N. J., Phillipsburg, N. J., and D. L. & W. R. R.:		
Sundry points.	343	.....
Via C. R. R. of N. J., Bethlehem, Pa., and L. & N. E. R. R.:		
Sundry points.	629	665
Via C. R. R. of N. J., Phillipsburg, N. J., and Lehigh & Hudson Ry. (local):		
Warwick, N. Y.	1,404	2,775
Sundry points.	1,220	658
Total.	2,624	3,433
Via C. R. R. of N. J., P'burg, L. & H. Ry., and West Shore R. R.:		
Newburg, N. Y.	6,036	.....
Sundry points.	5,051	.....
Total.	11,087	.....
Via C. R. R. of N. J., P'burg., L. & H. Ry., and C. N. E. R. R.:		
Poughkeepsie, N. Y.	11,412	9,850
Winsted, Conn.	867	2,529
Sundry points.	2,855	10,836
Total.	15,134	23,215
Via C. R. R. of N. J., P'burg, L. & H. Ry., and Erie R. R.:		
Sundry points.	91	164
Via C. R. R. of N. J., P'burg, L. & H. Ry., C. N. E., and N. Y. C. & H. R.:		
Sundry points.	1,029	.....
Via C. R. R. of N. J., P'burg, L. & H. Ry., C. N. E. and N. Y., N. H. & H.:		
Mount Vernon, N. Y.	.....	13,172
New Rochelle, N. Y.	.....	2,412
Woodlawn, N. Y.	.....	3,386
Bristol, Conn.	1,426	4,874
Danbury, Conn.	.....	3,849
Hartford, Conn.	3,440	11,071
Meriden, Conn.	.....	4,954
New Britain, Conn.	206	4,973
New Canaan, Conn.	.....	4,337
[illegible]ham, Conn.	.....	3,876
[illegible]rington, Conn.	.....	3,925
Wallingford, Conn.	.....	4,269
Waterbury, Conn.	200	8,696

STATEMENT B—Continued.

LEHIGH & WILKES-BARRE COAL COMPANY—Continued.

Statement showing route and markets in which its production was principally disposed of during the year 1901 and the year 1913—Continued.

		Tonnage, year 1901.	Tonnage, year 1913.
	To points on C. R. R. of N. J. System—Continued.		
	Via C. R. R. of N. J. P'burg, L. & H. Rv., C. N. E. and N. Y., N. H. & H.—Contd.		
560	Willimantic, Conn.	.....	3,122
	Olneyville, R. I.	.....	8,025
	Providence, R. I.	.....	3,103
	Woonsocket, R. I.	.....	4,965
	Attleboro, Mass.	.....	5,624
	Campello, Mass.	.....	3,947
	Fairmount, Mass.	.....	4,247
	Franklin, Mass.	.....	2,520
	Boston, Mass.	.....	8,992
	Lenoxdale, Mass.	.....	4,521
	Fitchburg, Mass.	.....	4,280
	Leominster, Mass.	.....	5,211
	Lenox, Mass.	.....	2,791
	Lowell, Mass.	.....	39,335
	Middleboro, Mass.	.....	2,960
	North Easton, Mass.	.....	2,776
	Northampton, Mass.	.....	3,802
	Norwood, Mass.	.....	6,978
	Pittsfield, Mass.	.....	3,635
	Readville, Mass.	.....	10,312
	South Framingham, Mass	.....	2,720
	Springfield, Mass.	.....	18,387
	Westfield, Mass.	.....	7,408
	Wrentham, Mass.	.....	21,375
	Sundry points, Mass.	5,575	110,153
	Total.	10,847	366,536
561	Via C. N. J., Pburg, and Penna. R. R.:		
	Atlantic City, N. J.	.....	3,549
	Camden, N. J.	.....	5,017
	Meadows (P. R. R. supply), N. J.	94,145	.....
	Princeton, N. J.	2,602	545
	Trenton, N. J.	.....	5,943
	Phila., Pa.	2,555	90
	Sundry points, Pa	1,129	2,998
	Total.	100,431	18,142
	Via C. N. J., Oak Island Jct., Penna. R. R.:		
	Jersey City, N. J.	6,680	63,840
	New Brunswick, N. J.	818	8,325
	Newark, N. J.	67,944	54,216
	Meadows (P. R. R. supply), N. J.	.....	20,593
	Rahway, N. J.	9,304	5,478
	Sundry points, N. J.	3,274	3,120
	Total.	88,020	155,572
	Via C. N. J., White House & Rockaway Valley R. R.:		
	Sundry points.	2,133	4,120
	Via C. N. J., Cranford Jct., Staten Island R. T. R. R.:		
	Stapleton, N. Y.	4,714	7,636
	Sundry points.	3,237	5,017
	Total.	7,951	12,653
562	Via C. N. J., Winslow Jct., and Atlantic City R. R.:		
	Sundry points.	1,663	.....
	Via C. N. J., Barnegat, and Tuckerton R. R.:		
	Sundry points.	468	442

		Tonnage, year 1901.	Tonnage, year 1913.
	To points on C. R. R. of N. J. System—Continued.		
	Via C. N. J., Roselle, and Rahway Valley R. R.:		
	Springfield, N. J.	.....	2,832
	Summit, N. J.	.....	7,699
	Sundry points.	99	579
	Total.	99	10,930
	Via C. N. J., South Amboy, and Raritan River R. R.:		
	Sundry points.	.....	6,033
	Via C. N. J. and West Shore R. R. (local):		
	Hoboken, N. J.	6,111	4,032
	Sundry points.	3,175	7,289
	Total.	9,286	11,321
	Via C. N. J., West Shore R. R., and N. Y. C.:		
	Albany, N. Y.	.....	31,516
	Rensselaer, N. Y.	.....	4,208
	Schenectady, N. Y.	.....	3,542
	Ottawa, Canada	.....	4,740
	Sundry points.	.....	9,326
	Total.	.....	53,332
	Via C. N. J., West Shore, and Boston & Maine R. R.:		
	Littleton, N. H.	.....	2,019
	Amherst, Mass.	.....	2,134
	Chicopee, Mass.	.....	3,339
	Chicopee Falls, Mass.	.....	4,961
	Holyoke, Mass.	.....	2,778
	Orange, Mass.	.....	4,004
	Worcester, Mass.	.....	4,266
	Sundry points.	.....	39,256
	Total.	.....	62,757
	Via C. N. J., West Shore and Boston & Albany R. R.:		
	Adams, Mass.	.....	2,074
	Boston, Mass.	.....	12,343
	Dalton, Mass.	.....	2,328
	Hopedale, Mass.	.....	4,137
	Indian Orchard, Mass.	.....	2,068
	Ludlow, Mass.	.....	3,637
	Natick, Mass.	.....	7,176
	North Adams, Mass.	.....	5,062
	North Grafton, Mass.	.....	2,567
	Pittsfield, Mass.	.....	25,833
	Springfield, Mass.	.....	7,105
	Wellesley, Mass.	.....	5,282
	Worcester, Mass.	.....	8,979
	Sundry points.	.....	18,223
	Total.	.....	106,819
	Via C. N. J., West Shore, B. A. & Rutland R. R.: Sundry points.	.....	4,004
	Via C. N. J., J. C. floats, and N. Y. N. H. & H. R. R.:		
	Mount Vernon, N. Y.	8,581	.....
	New Rochelle, N. Y.	11,333	.....
	Woodlawn, N. Y.	2,579	.....
	Danbury, Conn.	1,135	.....
	Hartford, Conn.	1,281	.....
	Meriden, Conn.	2,475	.....
	New Britain, Conn.	3,273	.....
	Waterbury, Conn.	1,148	.....
	Sundry points, Conn.	15,175	600
	Total.	46,980	600

STATEMENT B—Continued.

LEHIGH & WILKES-BARRE COAL COMPANY—Continued.

Statement showing routes and markets in which its production was principally disposed of during the year 1901 and the year 1913—Continued.

	Tonnage, year 1901.	Tonnage, year 1913.
To points on C. R. R. of N. J. System—Continued.		
Via C. N. J., J. C. floats, N. Y. C. & Hudson River R. R.:		
Bedford Hills, N. Y.	.....	3,025
Mt. Kisco, N. Y.	280	2,956
Mt. Vernon, N. Y.	1,371	1,614
Pleasantville, N. Y.	.....	4,856
Sundry points	4,076	14,470
Total	5,927	26,921
Via C. N. J., J. C. floats, and Long Island R. R.:		
Babylon, N. Y.	.....	2,801
Brooklyn, N. Y.	31,358	125,109
Bayshore, N. Y.	1,502	5,134
Corona, N. Y.	1,695	4,274
East Hampton, N. Y.	1,507	2,966
Far Rockaway, N. Y.	1,533	8,398
Hicksville, N. Y.	.....	2,710
Hempstead, N. Y.	3,375	7,293
Islip, N. Y.	1,336	3,440
Jamaica, N. Y.	1,578	20,761
Mineola, N. Y.	.....	3,154
Ozone Park, N. Y.	219	17,170
Patchogue, N. Y.	984	6,545
Port Washington, N. Y.	202	4,933
Queens, N. Y.	316	3,427
Richmond Hill, N. Y.	3,355	6,952
Rockville Center, N. Y.	2,603	8,258
Sag Harbor, N. Y.	1,550	3,891
Sayville, N. Y.	1,974	3,006
Southampton, N. Y.	1,095	3,366
Winfield, N. Y.	692	3,165
Whitestone, N. Y.	.....	2,599
Woodmere, N. Y.	.....	6,589
Westbury, N. Y.	502	3,538
Sundry points	27,737	58,398
Total	83,318	318,417
Via C. N. J., J. C. floats:		
To Brooklyn, N. Y.	128,516	7,707
To New York City, N. Y.	1,021	.....
Via C. R. R. of N. J. to tidewater for reshipment by water from Port Johnston and K'port docks:		
Brooklyn, N. Y.	132,530	328,647
Glen Cove, N. Y.	2,193	.....
New Rochelle, N. Y.	330	5,127
New York City, N. Y.	695,106	446,201
Peekskill, N. Y.	3,573	4,088
Port Chester, N. Y.	.....	3,471
West Chester, N. Y.	.....	10,320
Yonkers, N. Y.	1,092	4,332
Port Richmond, S. I., N. Y.	.....	13,691
Stapleton, S. I., N. Y.	.....	2,883
West Brighton, S. I., N. Y.	.....	6,208
Astoria, L. I., N. Y.	553	5,237
College Point, L. I., N. Y.	1,774	7,151
Flushing, L. I., N. Y.	3,934	15,017
Huntington, L. I., N. Y.	3,286	5,731
Port Jefferson, L. I., N. Y.	2,651	353
Ravenswood, L. I., N. Y.	35,571	20,829
Bangor, Me.	8,756	.....

	Tonnage, year 1901.	Tonnage, year 1913.	
To points on C. R. R. of N. J. System—Continued.			
Via C. R. R. of N. J. to tidewater for reshipment by water from Port Johnston and K'port docks—Cont'd.			
Belfast, Me.	3,527	.....	
Boothbay Harbor, Me.	.....	3,275	
Maine's Point, Me.	3,804	.....	
Portland, Me.	28,815	14,537	
Rockland, Me.	3,938	512	
Narragansett Pier, R. I.	5,218	.....	567
Newport, R. I.	15,345	21,125	567
Pawtucket, R. I.	.....	2,694	
Providence, R. I.	81,866	38,643	
Westerly, R. I.	6,805	5,248	
Dover, N. H.	5,261	.....	
Portsmouth, N. H.	38,766	2,982	
Boston, Mass.	187,282	125,638	
Dorchester, Mass.	.....	2,667	
East Braintree, Mass.	1,495	3,842	
Fall River, Mass.	6,345	5,889	
Gloucester, Mass.	.....	4,388	
Lynn, Mass.	3,617	13,981	
Newburyport, Mass.	21,686	13,340	
New Bedford, Mass.	2,917	2,947	
Quincy (qu), Mass.	.....	11,961	
Salem, Mass.	14,951	.....	
Taunton, Mass.	8,056	1,884	
Worcester, Mass., via Allyns Point, Conn.	3,816	.....	
Bridgeport, Conn.	13,864	616	
Hartford, Conn.	9,318	4,011	
New Haven, Conn.	35,264	4,144	
New London, Conn.	4,826	.....	
Norwalk, Conn.	.....	5,836	568
Norwich, Conn.	9,607	6,616	
Stonington, Conn.	6,373	2,064	
Newark, N. J.	.....	3,203	
Halifax, N. S.	7,718	.....	
Saint Johns, N. B.	19,860	13,930	
Quebec, Canada	17,143	5,563	
Sundry points	81,643	53,841	
Total	1,451,794	1,246,361	
Via C. R. R. of N. J. to tidewater, for reshipment by water via Boston, Mass., and Salem, Mass.:			
Andover, Mass.	2,424	1,564	
Arlington, Mass.	2,348	.....	
Boston, Mass.	31,131	13,261	
Clinton, Mass.	3,037	.....	
Haverhill, Mass.	2,066	.....	
Ipswich, Mass.	.....	2,082	
Lawrence, Mass.	19,095	22,579	
Lowell, Mass.	28,730	.....	
Salem, Mass.	21,094	35,366	
Stoneham, Mass.	3,161	.....	569
Woburn, Mass.	5,488	.....	
Worcester, Mass.	3,168	.....	
Waltham, Mass.	2,005	.....	
Winchester, Mass.	4,629	.....	
Concord, N. H.	3,937	.....	
St. Johnsbury, Vt.	2,582	.....	
Sundry points	36,321	11,523	
Total	171,416	86,375	

(Lehigh and Wilkes-Barre Coal Co., accounting department, Reading Terminal, W. C. Johnson, comptroller. U. S. vs. Reading et al.)

PHILADELPHIA, PA., *February 17, 1914.*

Mr. JACKSON E. REYNOLDS,
General Attorney, Central Building, New York City.

DEAR SIR: Replying to your favor of the 7th in regard to the above case, asking for statements showing the principal routes and points at which this company marketed its coal in typical years in the past.

We have no available information as to markets or points to which our coal was consigned prior to the year 1901. The information as to the routes was not made up in the old days before modern business systems were adopted and the older records have been destroyed long ago. There is no question, however, in my mind from my knowledge of our business, if we had the information it would show that practi-
570 cally the same markets were reached, and with proportionately the same tonnage as that shown where we now have the available records showing the tonnage to such markets.

I enclose herewith Statement A, which shows tons via each route, and Statement B, which shows tons via each route, and the towns to which we shipped in excess of 2,500 tons. I select years 1901 and 1913 as the business was normal in those years, but I can give additional years upon a week's notice, if desired.

Yours, truly,

(Signed) W. C. JOHNSON, Comptroller.

Counsel for Government produced certified copies of tariffs from the Interstate Commerce Commission which were offered in evidence at the last meeting at page 366 and marked **"Exhibits 47 and 48,"** which have been examined by counsel for defendants and found correct. The copies are as follows:

Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached (consisting of thirty-eight typewritten sheets), contain true and correct extracts from the schedules therein more particularly described, said schedules having been filed with the said Interstate Commerce Commission on
571 dates specified in said papers, and the said extracts therefrom being still in force on February 2, 1914.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 6th day of February, A. D. 1914.

(SEAL.) (Signed) GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 257A of 1907, I. C. C. No. A292, filed on September 30, 1907, said extracts being still in force on February 2, 1914.)

(Title page.)

Issued September 30, 1907 Effective November 1, 1907

(Page 4.)

NAMES OF PARTICIPATING LINES AND THEIR CONCURRENCE REFERENCE:

Central Railroad of New Jersey (Fx3—No. 9)

(Pages 9, 10, 11, 12, & 13.)

GEOGRAPHICAL LIST OF STATIONS

TO

NEW YORK DIVISION.

Index No.		
54	New Haven	Conn.
	SHORE LINE DIVISION	
71	New London	Conn.
	HARTFORD DIV.—Con.	
145	Springfield	Mass.
	HIGHLAND DIVISION—Con.	
287	Springfield (Highland Division)	Mass.
	PROVIDENCE DIVISION.	
298	Boston	Mass. 572
	WORCESTER DIVISION.	
355	Providence	R. I.
	PLYMOUTH DIVISION.	
406	Boston	Mass.
	TAUNTON DIVISION—Con.	
573	Fall River	Mass.
579	Newport	R. I.
590	New Bedford	Mass.
	MIDLAND DIVISION.	
597	Boston	Mass.

(Extracts from Supplement No. 11 to Philadelphia & Reading Railway Co. Joint Coal Tariff No. 257 A of 1907, I. C. C. No. A292, filed on May 15, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in cents per ton (2240 pounds) on

ANTHRACITE COAL

Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A438 or subsequent issues)

FROM PLACES IN

SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY, AND LYKENS VALLEY DISTRICTS

(As shown in tariff, I. C. C. No. A 434 or subsequent issues)

TO POINTS ON

NEW YORK, NEW HAVEN & HARTFORD RAILROAD (FX 3—No. 548)
GRAFTON & UPTON RAILROAD (FX 3—No. 512)
MOSHASSUCK VALLEY RAILROAD (FX 3—No. 548)
NEWPORT & WICKFORD RAILROAD (FX 3—No. 25)
RHODE ISLAND COMPANY (FX 3—No. 548)

AND

WOOD RIVER BRANCH RAILROAD (FX 3—No. 548)

Via Allentown, Pa., Central Railroad of New Jersey, Easton, Pa., Lehigh & Hudson River Railway, Maybrook, N. Y., and Central New England Railway.

ISSUED MAY 15, 1913 EFFECTIVE JUNE 16, 1913

(Except as noted in individual items.)

(Page 2.)

NAMES OF PARTICIPATING LINES AND THEIR CONCURRENCE REFERENCE
Central New England Railway (FX 3—No. 310)
Lehigh & Hudson River Railway (FX 3—No. 243)

574 (Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 302 A of 1909, I. C. C. No. A 340, filed on August 13, 1909, said extracts being still in force on February 2, 1914.)

(Title page.)

ISSUED AUGUST 13, 1909 EFFECTIVE SEPTEMBER 13, 1909

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS
TO

Index No.		
38	Springfield	Mass.
113	Boston	"

575 (Extracts from Supplement No. 3 to Philadelphia & Reading Railway Co. Joint Coal Tariff No. 302 A of 1909, I. C. C. No. A340, filed on October 30, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues.)
FROM PLACES IN MAHANOY AND SHAMOKIN DISTRICTS
(As shown in Tariff I. C. C. No. A 434 or subsequent issues.)
TO POINTS ON OR VIA
BOSTON & ALBANY RAILROAD (FX 4—No. 391)
Via Newberry Junction, Pa., New York Central & Hudson River R. R., and West Albany Transfer, N. Y.

ISSUED OCTOBER 30, 1912 EFFECTIVE NOVEMBER 30, 1912
(Except as noted in individual items)

(Page 2.)

PARTICIPATING CARRIERS
New York Central & Hudson River Railroad (FX 4—No. 28).

576 (Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 324 A of 1911, I. C. C. No. A 366, filed on February 16, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
In Full Carloads
(Subject to minimum weights as provided in tariff I. C. C. No. A 353 or subsequent issues.)
FROM COLLIERIES IN SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS
(See Geographical and Alphabetical List of Collieries, I. C. C. No. A 329 or subsequent issues.)
TO POINTS ON
NEW YORK CENTRAL & HUDSON RIVER RAILROAD (FX 4—No. 20)
Via Bound Brook Junction, N. J., C. R. R. of N. J., Jersey City, N. J., Float, and 69th Street, N. Y.

ISSUED FEBRUARY 17, 1911 EFFECTIVE MARCH 20, 1911

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS

TO

HUDSON DIVISION

Main Line

Index No.		
1	New York, 33rd St.	N. Y.
2	130th St.	N. Y.

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 368 A of 1911, I. C. C. No. A 406, filed on November 29, 1911, said extracts being still in force on February 2, 1914.) 577

(Title page.)

Rates in Cents per ton (2240 pounds) on

ANTHRACITE COAL

Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues.)

FROM COLLIERIES IN SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS

(As described in List of Collieries, I. C. C. No. A 329 or subsequent issues)

TO POINTS ON

PHILADELPHIA & READING RAILWAY

IN

PENNSYLVANIA, NEW JERSEY AND DELAWARE

ISSUED NOVEMBER 30, 1911 EFFECTIVE DECEMBER 31, 191.

(Page 6.)

GEOGRAPHICAL LIST OF STATIONS—Continued

TO

PORT READING R. R.

Via Port Reading Junction, N. J.

Index No.		
87	Port Reading (Local Delivery)	N. J.

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 381 A of 1912, I. C. C. No. A 422, filed on May 11, 1912, said extracts being still in force on February 2, 1914.) 578

(Title page.)

Rates in cents per ton (2240 pounds) on

RIVER ANTHRACITE COAL

Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues.)

FROM

SCHUYLKILL HAVEN, LANDINGVILLE, AUBURN, STONY CREEK, PORT CLINTON, HAMBURG, BERN, SHOEMAKERSVILLE AND MOHRSVILLE, PA.

TO

PORT READING, N. J.

(Via Port Reading Junction, N. J.)

FOR TRANS-SHIPMENT TO VESSELS

ISSUED MAY 13, 1912 EFFECTIVE MAY 14, 1912

(Issued under authority of Rule 77, of Interstate Commerce Commission Tariff Circular No. 18–A. No through rates are in effect. The rates from collieries in the Shamokin, Mahanoy, Schuylkill, Lorberry and Lykens Valley Districts (the more distant points) to Port Reading, N. J., for trans-shipment to vessels appear in tariff I. C. C. No. A 414.)

579 (Extracts from Philadelphia & Reading Railway Co. Coal Tariff No. 391 A of 1912, I. C. C. No. A 435, filed on October 4, 1912, said extracts being still in force on February 2, 1914.

(Title page.)

Rates in Cents per ton (2240 pounds) on
River Anthracite Coal
Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues)

FROM

SCHUYLKILL HAVEN, LANDINGVILLE, AUBURN, STONY CREEK, PORT CLINTON, HAMBURG, BERN, SHOEMAKERSVILLE AND MOHRSVILLE, PA.

TO

PORT RICHMOND (Philadelphia), PA.
For Trans-Shipment to Vessels
(Destined to points inside the Capes of the Delaware)

ISSUED OCTOBER 5, 1912 EFFECTIVE OCTOBER 7, 1912

(Issued under authority of Rule 77, of Interstate Commerce Commission Tariff Circular No. 18-A. No through rates are in effect. The rates from collieries in the Shamokin, Mahanoy, Schuylkill, Lorberry and Lykens Valley Districts (the more distant points) to Port Richmond (Philadelphia), Pa., for trans-shipment to vessels (destined to points inside the Capes of the Delaware), appear in Tariff I. C. C. No. A 431.)

580 (Extracts from Philadelphia & Reading Railway Co. Coal Tariff No. 392 A of 1912, I. C. C. No. A 436, filed on October 4, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in Cents per ton (2240 pounds) on
River Anthracite Coal
Carloads

(Subject to minimum weights as provided in Tariff I. C. C. No. A 353 or subsequent issues)

FROM

SCHUYLKILL HAVEN, LANDINGVILLE, AUBURN, STONY CREEK, PORT CLINTON, HAMBURG, BERN, SHOEMAKERSVILLE AND MOHRSVILLE, PA.

TO

PORT RICHMOND (Philadelphia), PA.
For Trans-Shipment to Vessels
(Destined to points beyond the Capes of the Delaware)

ISSUED OCTOBER 5, 1912 EFFECTIVE OCTOBER 7, 1912

(Issued under authority of Rule 77, of Interstate Commerce Commission Tariff Circular No. 18-A. No through rates are in effect. The rates from collieries in the Shamokin, Mahanoy, Schuylkill, Lorberry and Lykens Valley Districts (the more distant points) to Port Richmond (Philadelphia), Pa., for trans-shipment to vessels (destined to points beyond the Capes of the Delaware), appear in Tariff I. C. C. No. A 430.)

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 399 A of 1912, I. C. C. No. A 445, filed on December 27, 1912, said extracts being still in force on February 2, 1914.) 581

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS
(As shown in Tariff I. C. C. No. A 434 or subsequent issues)
TO
PORT LIBERTY, N. J.
(Via Bound Brook Junction, N. J.)
FOR TRANS-SHIPMENT TO VESSELS

ISSUED DECEMBER 27, 1912 EFFECTIVE JANUARY 28, 1913

(Extracts from Philadelphia & Reading Railway Co. Coal Tariff No. 414 A of 1913, I. C. C. No. A 470, filed on October 8, 1913, said extracts being still in force on February 2, 1914.) 582

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY, AND LYKENS VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO
PORT RICHMOND (Philadelphia), PA.
For transshipment to vessels
(Destined to points inside the Capes of the Delaware)

ISSUED OCTOBER 8, 1913 EFFECTIVE NOVEMBER 8, 1913

(Extracts from Philadelphia & Reading Railway Co. Coal Tariff No. 415 A of 1913, I. C. C. No. A 471, filed on October 8, 1913, said extracts being still in force on February 2, 1914.) 583

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO
PORT RICHMOND (PHILADELPHIA), PA.
For Trans-Shipment to Vessels
(Destined to points beyond the Capes of the Delaware)

ISSUED OCTOBER 8, 1913 EFFECTIVE NOVEMBER 8, 1913

584 (Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 416 A of 1913, I. C. C. No. A 472, filed on October 8, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

Rates in cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY, AND LYKENS VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO
PORT READING, N. J.
For Trans-Shipment to Vessels

ISSUED OCTOBER 8, 1913 EFFECTIVE NOVEMBER 8, 1913

585 (Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 42 A of 1913, I. C. C. No. A 486, filed on November 21, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

In Connection With
CENTRAL RAILROAD COMPANY OF NEW JERSEY (FX 3—No. 9)
AND
LEHIGH AND HUDSON RIVER RAILWAY (FX 3—No. 349)
Rates in Cents per ton (2240 pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO POINTS ON
CENTRAL NEW ENGLAND RAILWAY (FX 3—No. 497)
Via Allentown, Pa., Central Railroad Company of New Jersey, Easton, Pa., Lehigh & Hudson River Railway and Maybrook, N. Y.

ISSUED NOVEMBER 21, 1913 EFFECTIVE DECEMBER 22, 1913

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS
TO
MAIN LINE
SPRINGFIELD BRANCH

Index No.		
10	Springfield	Mass.

586 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 154, filed on July 24, 1909, said extracts being still in force on February 2, 1914.)

(Title page.)

Joint Freight Tariff on Anthracite Coal, Anthracite Briquettes and Boulets
Rates in Cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations located on the
CENTRAL RAILROAD OF NEW JERSEY
TO POINTS ON
CENTRAL NEW ENGLAND RAILWAY
(As shown on pages 3 and 5)

ISSUED NEW YORK, JULY 24, 1909 TAKING EFFECT AUGUST 24, 1909

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS TO WHICH RATES APPLY

TO

MAIN LINE

SPRINGFIELD BRANCH

Index No.

10 Springfield.....Mass.

ROUTE—Via Easton, Pa., Lehigh & Hudson River Ry., Maybrook, N. Y., and Central New England Railway.

(Extracts from Supplement No. 5 to the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 154, filed on January 11, 1912, said extracts being still in force on February 2, 1914.) 587

(Title page.)

In Connection With

CENTRAL NEW ENGLAND RAILWAY CO. (FX3—No. 22, Corr.)

LEHIGH & HUDSON RIVER RAILWAY CO. (FX5—No. 2)

ISSUED NEW YORK JANUARY 11, 1912 EFFECTIVE FEBRUARY 12, 1912

(Except as noted in individual items)

(Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 105, filed on August 28, 1909, said extracts being still in force on February 2, 1914.) 588

(Title page.)

Joint Freight Tariff on Anthracite Coal, Anthracite Briquettes and Boulets

Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons

From Collieries, Washeries and Stations located on the

CENTRAL RAILROAD OF NEW JERSEY

TO POINTS ON

CENTRAL NEW ENGLAND RAILWAY

(As shown on pages 3 and 5)

ISSUED NEW YORK, AUGUST 28, 1909 TAKING EFFECT SEPTEMBER 28, 1909

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS TO WHICH RATES APPLY

TO

MAIN LINE

SPRINGFIELD BRANCH

Index No.

10 Springfield.....Mass.

ROUTE—Via Bethlehem Jct., Pa., Lehigh and New England R. R., Campbell Hall, N. Y., and Central New England Railway.

(Extracts from Supplement No. 6 to the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 165, filed on January 22, 1912, said extracts being still in force on February 2, 1914.) 589

(Title page.)

In Connection With

CENTRAL NEW ENGLAND RAILWAY CO. (FX3—No. 22, Corr.)

LEHIGH & NEW ENGLAND RAILROAD CO. (FX4—No. 36)

ISSUED NEW YORK, JANUARY 22, 1912 EFFECTIVE FEBRUARY 16, 1912

(Except as noted in individual Items)

590 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 198, filed on April 10, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

Joint Freight Tariff on Anthracite Coal Anthracite Briquettes and Boulets
Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations located on the
CENTRAL RAILROAD OF NEW JERSEY
TO POINTS ON
NEW YORK CENTRAL & HUDSON RIVER R. R.
(as shown on pages 3 and 5)

ISSUED NEW YORK, APRIL 10, 1911 TAKING EFFECT MAY 11, 1911

(Page 5.)

ROUTE:

Via C. R. R. of N. J., Jersey City, N. J., Float, 60th St., N. Y., and New York Central & Hudson River R. R.

591 (Extracts from Supplement No. 2 to the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 198, filed on November 28, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

In Connection With
NEW YORK CENTRAL & HUDSON RIVER RAILROAD
(Fx 4—No. 26)

ISSUED NEW YORK, NOVEMBER 28, 1911 EFFECTIVE DECEMBER 31, 1911
(Except as noted in individual items)

592 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 201, filed on May 20, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
New York & Long Branch Railroad
(FX5—No. 2)
In Connection With
DELAWARE, LACKAWANNA & WESTERN RAILROAD
(FX4—No. 36)
JOINT FREIGHT TARIFF ON ANTHRACITE COAL
Rates in cents per ton of 2,240 pounds, in carloads of not less than 15 gross tons
FROM
TAYLOR, PA.
(Delaware, Lackawanna & Western Railroad Tracks)
TO STATIONS ON
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
AND
NEW YORK & LONG BRANCH RAILROAD
As shown Herein

ISSUED NEW YORK, MAY 20, 1911 TAKING EFFECT MAY 24, 1911

(Pages 4 and 5.)

Geographical List of Stations to which Rates Apply

TO

N. J. CENTRAL DIV.

Index No.		
40	Elizabethport (Local)	N. J.
48	Communipaw	"
49	Jersey Ave. (Jersey City)	"
50	Jersey City	"

ROUTING

Via Delaware, Lackawanna & Western Railroad, Taylor, Pa., and Central Railroad Company of New Jersey.

(Extracts from the Central Railroad Company of New Jersey Local and Joint Freight Tariff I. C. C. A. No. 211, filed on August 12, 1911, said extracts being still in force on February 2, 1914.) 593

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
BUSH TERMINAL RAILROAD COMPANY
(Fx5—No. 1)
LOCAL AND JOINT FREIGHT TARIFF
APPLYING ON
ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS.
In Carloads of not less than 15 gross tons
From Collieries Washories and stations Located on the
CENTRAL RAILROAD COMPANY OF NEW JERSEY
To
New York and Brooklyn Terminals, N. Y., Weehawken, N. J., Edgewater, N. J., and New York Harbor.
As shown herein

ISSUED NEW YORK, AUGUST 12, 1911. EFFECTIVE SEPTEMBER 13, 1911

(Page 3.)

ROUTE

Via C. R. R. of N. J. to Jersey City, N. J., thence via car float.

(Extracts from the Central Railroad Company of New Jersey Local and Joint Freight Tariff I. C. C. A. No. 213, filed on October 31, 1911, said extracts being still in force on February 2, 1914.) 594

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
New York & Long Branch Railroad
(Fx5—No. 2)
LOCAL AND JOINT FREIGHT TARIFF
Applying on
ANTHRACITE COAL
AND
ANTHRACITE BRIQUETTES AND BOULETS
In Carloads of Not less than 15 Gross Tons
FROM
COLLIERIES, WASHERIES AND STATIONS
ON
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
TO STATIONS ON
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
AND
NEW YORK & LONG BRANCH RAILROAD
As shown herein

ISSUED NEW YORK, OCTOBER 30, 1911 EFFECTIVE DECEMBER 1, 1911

(Pages 4, 5, and 6.)

Geographical List of Stations on the Central Railroad Company of New Jersey to which Rates Apply and Rates Applicable Thereto.

Rates in Cents per ton of 2,240 Pounds

TO

NEW JERSEY CENTRAL DIVISION—Con.

Index No.		
	South Branch	
69	Elizabethport (Local)	N. J.
	Newark Branch	
83	Communipaw	N. J.
84	Jersey Ave. (Jersey City)	N. J.
85	Jersey City	N. J.

ROUTING

1 to 98—Via Central Railroad of New Jersey.

595 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 232, filed on November 29, 1911, said extracts being still in force on February 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

In Connection With

PENNSYLVANIA RAILROAD CO. (Fx2—No. 78)

JOINT FREIGHT TARIFF

ON

Anthracite Coal, Anthracite Briquettes and Boulets

In Carloads of not less than 15 gross tons

FROM COLLIERIES, WASHERIES AND STATIONS LOCATED ON THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

TO POINTS ON

PENNSYLVANIA RAILROAD CO.

AS SHOWN HEREIN

ISSUED NEW YORK, NOVEMBER 29, 1911 EFFECTIVE DECEMBER 31, 1911

(Page 2.)

Alphabetical List of Stations on the Pennsylvania Railroad to which rates apply and rates applicable thereto.

Rates in Cents per ton of 2,240 pounds

TO

Jersey City ..... N. J.

ROUTING

Via C. R. R. Co. of N. J., Oak Island Jct., N. J., and Pennsylvania R. R.

Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 249, filed on June 18, 1912, said extracts being still in force on February 2, 1914.) 596

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
CENTRAL NEW ENGLAND RY. (Fx3—No. 22 CORR).
GRAFTON & UPTON R. R. (Fx3—No. 12)
LEHIGH & HUDSON RIVER RY. (Fx5—No. 2)
MOSHASSUCK VALLEY R. R. (FX3—No. 558)
NARRAGANSETT PIER R. R. (FX3—No. 78)
NEW YORK, NEW HAVEN & HARTFORD R. R. CO. (Fx3—No. 558)
WOOD RIVER BRANCH R. R. (Fx3—No. 558)
Joint Freight Tariff
Applying on
Anthracite Coal, Anthracite Briquettes and Boulets
Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations Located on the
CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Points On
New York, New Haven & Hartford Railroad
Grafton and Upton Railroad
Moshassuck Valley R. R., Narragansett Pier Railroad
Wood River Branch Railroad
As shown herein.

ISSUED NEW YORK, JUNE 18, 1912 EFFECTIVE JULY 19, 1912

(Pages 7, 8, 9, 10, and 12.)

GEOGRAPHICAL LIST OF STATIONS TO WHICH RATES APPLY 597
TO

Index No.		
	NEW YORK DIVISION	
1	Harlem River	N. Y.
	SHORE LINE DIVISION	
53	New Haven	Conn.
103	Springfield	Mass.
134	New London	Conn.
	PROVIDENCE DIVISION	
167	Providence	R. I.
	BOSTON DIVISION	
256	Boston	Mass.
	OLD COLONY DIV.—Continued.	
398	Fall River	Mass.
404	Newport	R. I.
453	New Bedford	Mass.
	MIDLAND DIVISION	
	Springfield Branch	
472	Springfield (Midland Division)	Mass.

ROUTE

Via C. R. R. of N. J. to Easton, Pa., Lehigh & Hudson River Railway, Maybrook, N. Y., Central New England Railway, Hopewell Junction, N. Y., and New York, New Haven & Hartford Railroad and Junctions shown.

598 (Extracts from the Central Railroad Co. of New Jersey Joint Freight Tariff I. C. C. A. No. 250, filed on June 18, 1912, said extracts being still in force on Feb. 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
CENTRAL NEW ENGLAND RY. (FX3—No. 22 CORR)
GRAFTON & UPTON R. R. (FX3—No. 12)
LEHIGH & NEW ENGLAND RAILROAD (FX4—No. 36)
MOSHASSUCK VALLEY R. R. (FX5—No. 558)
NARRAGANSETT PIER R. R. (FX3—No. 78)
NEW YORK, NEW HAVEN & HARTFORD R. R. CO. (FX5—No. 558)
WOOD RIVER BRANCH R. R. (FX5—No. 558)
Joint Freight Tariff
Applying on
ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS
Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations Located on the
CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Points On
New York, New Haven & Hartford Railroad
Grafton and Upton Railroad
Moshassuck Valley R. R., Narragansett Pier Railroad
Wood River Branch Railroad
As shown herein

ISSUED NEW YORK, JUNE 18, 1912 EFFECTIVE JULY 19, 1912

(Pages 7, 8, 9, 10, and 12.)

TO

NEW YORK DIVISION

599 Index No.

1 Harlem River.....N. Y.

SHORE LINE DIVISION

53 New Haven.....Conn.
103 Springfield.....Mass.
134 New London.....Conn.

PROVIDENCE DIVISION

167 Providence.....R. I.

BOSTON DIVISION

256 Boston.....Mass.

OLD COLONY DIV.—Continued

398 Fall River.....Mass.
404 Newport.....R. I.
453 New Bedford.....Mass.

MIDLAND DIVISION
Springfield Branch

472 Springfield (Midland Division).....Mass.

ROUTE

Via C. R. R. of N. J. to Bethlehem Jct., Pa., Lehigh & New England Railroad, Campbell Hall, N. Y., Central New England Railway, Hopewell Junction, N. Y., and New York, New Haven & Hartford Railroad and Junctions shown.

(Extracts from the Central Railroad Co. of New Jersey Joint Freight Tariff I. C. C. A. No. 251, filed on July 8, 1912, said extracts being still in force on Feb. 2, 1914.) 600

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
BOSTON & MAINE RAILROAD (Fx3—No. 10)
ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD CO. (Fx3—No. 10)
WEST SHORE RAILROAD (Fx4—No. 26)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO. (Fx4—No. 26)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL, VIZ.:
Pea, Prepared Sizes and Buck No. 1
and
Anthracite Briquettes and Boulets

Except as otherwise provided for herein, Rates on Buck Nos. 2 and 3, or smaller sizes, will be made on combination of proportional rate to Rotterdam Junction, N. Y., as per Central Railroad Company of New Jersey Tariff I. C. C. A. No. 195, supplements thereto and re-issues thereof, plus rate beyond (local or proportional, as the case may be) lawfully on file with the Interstate Commerce Commission.

In Carloads of Not Less Than 15 Gross Tons
From Collieries, Washeries and Stations Located on
The Central Railroad Company of New Jersey
To Points on the
BOSTON & MAINE RAILROAD
ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD
As Shown in Tariff

ISSUED NEW YORK, JULY 8, 1912. EFFECTIVE AUGUST 11, 1912 601

(Pages 6, 9, 11, and 13.)

Geographical List of Stations on the Boston & Maine Railroad To which Rates Apply and Rates Applicable Thereto.

STATIONS

Index No.		
	TERMINAL DIVISION	
1	Boston	Mass.
	CONNECTICUT RIVER DIVISION	
308	Springfield	Mass.
	W., N. & P. Division—Continued	
555	Portland	Me.

ROUTING

Via Central Railroad Company of New Jersey to Claremont, N. J., National Docks Railway, Sterling Junction, N. J., West Shore Railroad, Rotterdam Junction, N. Y., and Boston & Maine Railroad,

or

Via Central Railroad Company of New Jersey, Jersey City, N. J., Float to Weehawken, N. J., West Shore Rilroad, Rotterdam Junction, N. Y., and Boston and Maine Railroad.

602 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 259, filed on June 19, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
BOSTON & ALBANY RAILROAD (FX4—No. 389)
GRAFTON & UPTON RAILROAD (FX3—No. 12)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO. (FX4—No. 26)
WEST SHORE RAILROAD (Fx4—No. 26)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS
In Carloads of not less than 15 gross tons
From Collieries, Washeries and Stations located on
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Points On
BOSTON & ALBANY RAILROAD
GRAFTON & UPTON RAILROAD
As shown In Tariff

ISSUED NEW YORK, JUNE 19, 1913 EFFECTIVE JULY 20, 1913

(Pages 4 and 5.)

GEOGRAPHICAL LIST OF STATIONS ON THE BOSTON & ALBANY RAILROAD TO WHICH RATES APPLY AND RATES APPLICABLE THERETO

Index No.	STATION	
	North Adams Branch	
38	Springfield	Mass.
	Milford Branch	
109	Boston	Mass.

(Page 5—Continued.)

ROUTING

603 On shipments destined to Points taking the following Index Nos.	Route Via
1 to 116, inclusive	Via C. R. R. Co. of N. J., Claremont, N. J., National Docks Railway, Sterling Junction (National Junction), N. J., West Shore Railroad, West Albany Transfer, N. Y., and Boston & Albany Railroad, or Via C. R. R. Co. of N. J., Jersey City, N. J., Float, Weehawken, N. J., West Shore Railroad, West Albany Transfer, N. Y., and Boston & Albany Railroad.

604 (Extracts from the Central Railroad Company of New Jersey Local and Proportional Freight Tariff I. C. C. A. No. 263, filed on July 28, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
Local and Proportional Freight Tariff
ON
ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS
In Carloads of Not less than 15 Gross Tons
From Collieries, Washeries and Stations Located on
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Points on The
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
For Reshipment By Water
As Shown Herein

ISSUED NEW YORK, July 28, 1913 EFFECTIVE SEPTEMBER 12, 1913

(Page 2.)

LIST OF STATIONS TO WHICH RATES APPLY

Anthracite Coal consigned to Piers at points shown below for reshipment, will be transported at following rates, which include shipping charges free on board vessels. Trimming charges will be additional and at rates shown below.

TO

Elizabethport Pier (Elizabethport).....N. J.
Port Johnston..... "
Communipaw Pier (Jersey City)..... "
Port Liberty..... "

(Extracts from the Central Railroad Company of New Jersey Joint and Proportional Freight Tariff I. C. C. A. No. 264, filed on September 4, 1913, said extracts being still in force on February 2, 1914.) 605

(Title page.)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
In Connection With
NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO. (Fx4—No. 26)
WEST SHORE RAILROAD (Fx4—No. 26)
CANADIAN PACIFIC RAILWAY CO. (FX3—No. E-301.)
(Lines Fort William, Ont., and East thereof)
JOINT AND PROPORTIONAL FREIGHT TARIFF
Applying on
ANTHRACITE COAL
ANTHRACITE BRIQUETTES AND BOULETS
In Carloads of Not Less than 15 gross tons
From Collieries, Washeries and Stations Located on
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
To Stations On The
NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO.
WEST SHORE RAILROAD
CANADIAN PACIFIC RAILWAY CO.
As Shown Herein

ISSUED NEW YORK, SEPTEMBER 4, 1913 EFFECTIVE OCTOBER 5, 1913

(Page 5.)

Geographical List of Stations on the West Shore Railroad to which Rates Apply and Rates Applicable Thereto.

Index No.	STATIONS	
	RIVER DIVISION	
1	Jersey City	N. J.
4	Weehawken	N. J.

(Page 6.)

ROUTING

On Traffic destined to Points taking Index Nos.	Route via
1 to 70 inclusive.....	Via C. R. R. Co. of N. J., Claremont, N. J., National Docks Railway, Sterling Junction (National Junction), N. J., and West Shore Railroad,
	or
	Via C. R. R. Co. of N. J., Jersey City, N. J. Float Weehawken, N. J., and West Shore Railroad.

606 (Extracts from the Central Railroad Company of New Jersey Joint Freight Tariff I. C. C. A. No. 137, filed on July 2, 1909, said extracts being still in force on February 2, 1914.)

(Title page.)

In Connection With
PENNSYLVANIA RAILROAD
(Fx2—No. 73)
TUCKERTON RAILROAD, (Fx3—No. 5)
WEST JERSEY & SEASHORE RAILROAD, (Fx2—No. 54)
PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD, (Fx2—No. 54)
NEW YORK, PHILADELPHIA & NORFOLK RAILROAD, (Fx3—No. 15)
JOINT FREIGHT TARIFF ON ANTHRACITE COAL, ANTHRACITE BRIQUETTES AND BOULETS.

Rates in cents per ton of 2,240 pounds in carloads of not less than 15 gross tons
From Collieries, Washeries and Stations located on the
CENTRAL RAILROAD OF NEW JERSEY
(as shown on page 2)
TO POINTS ON
PENNSYLVANIA RAILROAD, TUCKERTON RAILROAD, WEST JERSEY AND SEASHORE RAILROAD, PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD, NEW YORK, PHILADELPHIA AND NORFOLK RAILROAD
(as shown on pages 3 to 7 and 9 to 16)

ISSUED NEW YORK, JULY 2, 1909 TAKING EFFECT AUGUST 2, 1909

(Pages 10, 13, and 14.)

TO

607 Index No. Philadelphia Terminal Division

108	Mantua	Pa.
109	West Philadelphia	Pa.
110	Fifty-second Street	Pa.
111	Broad and Washington Ave	Pa.
112	Wash'ton Ave. Wharf	Pa.

PHILA., BALTIMORE & WASH. R. R.
Philadelphia Terminal Division.

415	Gray's Ferry	Pa.
416	Fifty-eighth Street	Pa.

PHILA., BALTO. & WASH R. R.
(Maryland Division—Continued)

464	Baltimore (Local)	Md.
465	Baltimore (Boston St. Piers—R ipment by water)	Md.
489	Washington	D. C.

(Page 16.)

ROUTE

Via Central Railroad of New Jersey to Phillipsburg, N. J., thence Pennsylvania Railroad to destinations on their system and to Junction Points and connecting railroads shown to points beyond.

(Extracts from Philadelphia & Reading Railway Co. Joint Coal Tariff No. 370 A of 1911, I. C. C. No. A 408, filed on November 29, 1911, said extracts being still in force on February 2, 1914.) 608

(Title page.)

ISSUED NOVEMBER 30, 1911 EFFECTIVE DECEMBER 31, 1911

(Page 6.)

GEOGRAPHICAL LIST OF STATIONS
TO
BALTIMORE & OHIO RAILROAD
Philadelphia Division-Con.
Via Park Jct., Philadelphia, Pa.

Index No.		
20	58th Street (Note 1)	Pa.

(Pages 7 and 8.)

GEOGRAPHICAL LIST OF STATIONS
TO
BALTIMORE DIVISION
Via Park Junction, Philadelphia, Pa.

Index No.		
79	Baltimore	Md.
	Washington Branch-Con.	
128	Washington	D. C.

(Extracts from Supplement No. 2 to Philadelphia & Reading Railway Co. Joint Coal Tariff No. 370 A of 1911, I. C. C. No. A 408, filed on April 30, 1913, said extracts being still in force on February 2, 1914.) 609

(Title page.)

Rates in Cents per ton (2240 Pounds) on
ANTHRACITE COAL
Carloads
(Subject to minimum weights as provided in Tariff I. C. C. No. A 438 or subsequent issues)
FROM PLACES IN
SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKNES VALLEY DISTRICTS
(As shown in tariff I. C. C. No. A 434 or subsequent issues)
TO POINTS ON
BALTIMORE & OHIO RAILROAD (Fx4—No. 1375)
(East of Ohio River)
CHESAPEAKE BEACH RAILWAY (Fx4—No. 1375)
WASHINGTON SOUTHERN RAILWAY (Fx5—No. 71)
RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD (Fx5—No. 71)
AND
SOUTHERN RAILWAY (Fx3—No. 1011)
Via Birdsboro, Pa., and Elsmere Junction, Del., or Park Junction, Philadelphia, Pa
ISSUED APRIL 30, 1913 EFFECTIVE MAY 31, 1913
(Except as noted in individual items)

(Page 3.)

GEOGRAPHICAL LIST OF STATIONS
TO
PHILADELPHIA DIVISION
Via Park Junction, Philadelphia, Pa.

Note 1.—The rates as published herein to 58th Street will apply to trestles and yards of coal dealers and sidings and industries reached by the Baltimore & Ohio Railroad west of the Schuylkill River within the limits of the City of Philadelphia.

EXHIBIT 48.

610 INTERSTATE COMMERCE COMMISSION,
Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached (consisting of nine typewritten sheets) contain true and correct extracts from the schedules therein more particularly described, said schedules having been filed with the said Interstate Commerce Commission on dates specified in said papers; the said extracts therefrom being still in force on February 2, 1914.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 9th day of February, A. D. 1914.

[SEAL.] (Signed) GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission.

611 (Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2327, filed on August 2, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
IN CONNECTION WITH
CENTRAL NEW ENGLAND RAILWAY, (Fx3—No. 106 corrected.)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL
Anthracite Briquettes and Boulets,
In Full Carloads.
MINIMUM WEIGHT 15 Gross Tons.
APPLYING FROM COLLIERIES AND WASHERIES ON
LEHIGH & NEW ENGLAND RAILOAD
as shown in L. & N. E. R. R., I. C. C. No. a-2320, or re-issues thereof,
To Stations On
CENTRAL NEW ENGLAND RAILWAY,
As Shown On Page 5.
Route via Campbell Hall, N. Y., and C. N. E. Ry., as shown on page 5.
ISSUED, JULY 29, 1912 EFFECTIVE AUGUST 7, 1912

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS ON CENTRAL NEW ENGLAND RAILWAY
STATIONS.
MAIN LINE
Springfield Br.

Index No.		
108	Springfield	Mass
	Route via Campbell Hall, N. Y., and Central New England Ry.	

(Extracts from Lehigh & New England Railroad Co. Joint and Proportional Freight Tariff I. C. C. No. 612 A-2344, filed on August 21, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
In Connection With
BOSTON & ALBANY RAILROAD (FX4—No. 410.)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD, (FX4—No.31.)
RUTLAND RAILROAD, (FX3—No. 399.)
WEST SHORE RAILROAD, (FX4—No. 31.)
JOINT AND PROPORTIONAL FREIGHT TARIFF.
ON
Anthracite Coal,
Anthracite Briquettes and Boulets,
In Full Carloads.
Minimum Weight 15 Gross Tons.
Applying from Collieries and Washeries On
LEHIGH & NEW ENGLAND RAILROAD
As shown in L. & N. E. R. R., I. C. C. No. A—2320, * * * , or reissues thereof.
To Stations On
RUTLAND RAILROAD,
As Shown on Page 3.
Route via Campbell Hall, N. Y., W. S. R. R., and as shown on page 3.
ISSUED, AUGUST 19, 1912. EFFECTIVE, AUGUST 28, 1912.

(Page 3.)

GEOGRAPHICAL LIST OF STATIONS ON RUTLAND RAILROAD.

Index No.	STATIONS	STATE:

ROUTING.
Route via Campbell Hall, N. Y., W. S. R. R., N. Y. C. & H. R. R. R., West Albany Transfer, N. Y., B. & A. R. R., Chatham, N. Y., and Rut. R. R.

(Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2369, filed on September 10, 1912, said extracts being still in force on September 2, 1914.) 613

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
In Connection With
BOSTON & ALBANY RAILROAD, (FX4—No. 410.)
GRAFTON & UPTON RAILROAD, (FX3—No. 482.)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD, (FX4—No. 31.)
WEST SHORE RAILROAD, (FX4—No. 31.)
JOINT FREIGHT TARIFF
ON
Anthracite Coal,
Anthracite Briquettes and Boulets,
IN FULL CARLOADS
Minimum Weight 15 Gross Tons
Applying from Collieries and Washeries On
LEHIGH & NEW ENGLAND RAILROAD,
as shown in L. & N. E. R. R., I. C. C. No. A-2320, or re-issues thereof.
To Stations On
BOSTON & ALBANY RAILROAD
AND
GRAFTON & UPTON RAILROAD
As Shown On Pages 5 and 6
Route Via Campbell Hall, N. Y., West Shore R. R., and as shown on page 6
ISSUED SEPTEMBER 10, 1912 EFFECTIVE OCTOBER 14, 1912

(Page 5.)

GEOGRAPHICAL LIST OF STATIONS ON BOSTON & ALBANY RAILROAD

STATIONS

HUDSON & CHATHAM BR.

Via Chatham

Index No.		
39	Springfield	Mass.
115	Boston	Mass.

(Page 6.)

ROUTING

For Points on Boston & Albany Railroad

614 Route Via Campbell Hall, N. Y., W. S. R. R., N. Y. C. & H. R. R. R., West Albany Transfer, N. Y., and B. & A. R. R.

For Points on Grafton & Upton Railroad

Route Via Campbell Hall, N. Y., W. S. R. R., N. Y. C. & H. R. R. R., West Albany Transfer, N. Y., B. & A. R. R., North Grafton, Mass., and C. & U. R. R.

(Pages 8, 10, 12, and 13.)

GEOGRAPHICAL LIST OF STATIONS ON

615 Boston & Maine Railroad and St. Johnsbury & Lake Champlain Railroad

STATIONS

Terminal Div.

Index No.		
1	Boston, Minot St	Mass.
2	Boston, Warren Bridge	Mass.
3	Boston, Rutherford Ave	Mass.

Connecticut River Division.

313	Springfield	Mass.

Worcester, Nashua & Portland Div.—Con.

564	Portland	Me.

ROUTING

Route Via Campbell Hall, N. Y., West Shore Railroad, New York Central & Hudson River Railroad, Rotterdam Junction, N. Y., and Boston & Maine Railroad and connections.

616 (Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2399, filed on November 19, 1912, said extracts being still in force on February 2, 1914.)

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.

In Connection With

BOSTON & MAINE RAILROAD, (FX3—No. 25)

NEW YORK CENTRAL & HUDSON RIVER RAILROAD, (FX4—No. 31.)

ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD, (FX3—No. 25.)

WEST SHORE RAILROAD, (FX4—No. 31.)

JOINT FREIGHT TARIFF

ON

ANTHRACITE COAL,

Anthracite Briquettes and Boulets,

In Full Carloads

Minimum Weight 15 Gross Tons

Applying from Collieries and Washeries on

LEHIGH & NEW ENGLAND RAILROAD,

As Shown in L. & N. E. R. R., I. C. C. No. A—2375 * * *, or reissues Thereof,

To Stations On

BOSTON & MAINE RAILROAD

And

ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD.

As Shown Within

Route Via Campbell Hall, N. Y., West Shore Railroad and as shown on Page 13

ISSUED NOVEMBER 18, 1912 EFFECTIVE DECEMBER 20, 1912

(Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2407, filed on December 7, 1912, said extracts being still in force on February 2, 1914.) 617

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
In Connection With
CENTRAL NEW ENGLAND RAILROAD, (FX3—No. 106 corrected)
GRAFTON & UPTON RAILROAD, (FX3—No. 482)
MOSHASSUCK VALLEY RAILROAD, (FX3—No. 606)
NEW YORK, NEW HAVEN & HARTFORD RAILROAD, (FX3—No. 606)
RHODE ISLAND COMPANY, (FX3—No. 606)
WOOD RIVER BRANCH RAILROAD, (FX3—No. 606)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL,
ANTHRACITE BRIQUETTES AND BOULETS
In Full Carloads, Minimum Weight 15 Gross Tons,
Applying from Collieries and Washeries On
LEHIGH & NEW ENGLAND RAILROAD,
as shown in L. & N. E. R. R., I. C. C. No. A-2375, or re-issues thereof
To Stations On
NEW YORK, NEW HAVEN & HARTFORD RAILROAD,
AND CONNECTIONS
As Shown on Pages 9 to 17 inclusive.
Route Via Campbell Hall, N. Y., C. N. E. Ry., and as shown on page 17
ISSUED, DECEMBER 7, 1912 EFFECTIVE, JANUARY 9, 1913

(Pages 9, 10, 11, 12, 14, and 17.)

GEOGRAPHICAL LIST OF STATIONS ON 618
New York, New Haven & Hartford Railroad and Connections

Index No.	Station	
	SHORE LINE DIVISION	
53	New Haven	Conn.
103	Springfield (Shore Line Div.)	Mass.
134	New London	Conn.
	PROVIDENCE DIV.—Con.	
167	Providence	R. I.
	BOSTON DIVISION	
256	Boston	Mass.
	OLD COLONY DIV.—Con.	
398	Fall River	Mass.
404	Newport	R. I.
453	New Bedford	Mass.
	MIDLAND DIVISION	
	Springfield Branch.	
472	Springfield (Midland Div.)	Mass.

ROUTE.

Route via Campbell Hall, N. Y., Central New England Railway, Hopewell Junction, N. Y., and New York, New Haven & Hartford Railroad and Connections via Junctions shown.

619 (Extracts from Lehigh & New England Railroad Co. Joint Freight Tariff I. C. C. No. A-2455, filed on May 20, 1913, said extracts being still in force on February 2, 1914.)

(Title page.)

LEHIGH & NEW ENGLAND RAILROAD CO.
In Connection With
BOSTON & ALBANY RAILROAD, (FX4—No. 410.)
BOSTON & MAINE RAILROAD, (FX3—No. 25.)
CANADIAN PACIFIC RAILWAY, (FX3—No. 427.)
CENTRAL VERMONT RAILWAY, (FX3—No. 341.)
MONTPELIER & WELLS RIVER RAILROAD, (FX3—No. 145.)
NEW YORK CENTRAL & HUDSON RIVER RAILROAD, (FX4—No. 31.)
RUTLAND RAILROAD, (FX3—No. 399.)
WEST SHORE RAILROAD, (FX4—No. 31.)
WOODSTOCK RAILWAY, (FX3—No. 20.)
JOINT FREIGHT TARIFF
ON
ANTHRACITE COAL,
Anthracite Briquettes and Boulets,
In Full Carloads.
Minimum Weight 15 Gross Tons.
Applying from Collieries and Washeries On
LEHIGH & NEW ENGLAND RAILROAD
as shown in L. & N. E. R. R., I. C. C. No. A-2375, * * *, or reissues thereof.
To Stations On
Canadian Pacific Railway, Montpelier & Wells River Railroad,
Central Vermont Railway, Woodstock Railway,
As Shown Within
Route Via Campbell Hall, N. Y., West Shore Railroad and as shown on Page 6.
ISSUED, MAY 20, 1913 EFFECTIVE, JUNE 21, 1913

620 In connection with these tariffs Government's counsel offer in evidence, subject to correction, a tabulated recapitulation (marked "**Exhibit No. 51**"), as follows:

621 *Philadelphia & Reading tariffs.*

Tariff I. C. C. No.	From (*).	Via R. R.	To Junction.	Via R. R.	Jct.	R. R.
A292	1	P. & R	Allentown	C. R. R. of N. J.	Easton	L. & H. R.
A486	1	do	do	do	do	do
A340	2	do	Newberry Jct	N. Y. C. H. R.	West Albany	B. & A.
A366	1	do	Bound Brook	C. R. R. Co. of N. J.	Jersey City	N. Y. C. H. R. (float).
A406	1	do	Pt. Reading Jct	Pt. Reading R. R.		
A472	1	do	do	do		
A422	3	do	do	do		
A435	3	do				
A470	1	do				
A436	3	do				
A471	1	do				
A445	1	do	Bound Brook Jct			
A408	1	do	Park Jct. (Phila.)	B. & O		

* 1=Shamokin, Mahanoy, Schuylkill, Lorberry, and Lykens Valley districts. 2=Shamokin, Mahanoy 3=(River) Schuylkill Haven, Landingville, Auburn, Stony Creek, Port Clinton, Hamburg, Bern, Sha makersville, and Mohrsville.

Central Railroad Company of New Jersey tariffs.

Tariff I. C. C. No.	From (*).	Via R. R.	To Junction.	R. R.	Jct.	R. R.
A249	4	C. R. R. N. J.	Easton, Pa	L. & H. R	Maybrook	C. N. E
A250	4	do	Bethlehem Jct	L. & N. E	Campbell Hall	C. N. E.*
A251	4	do	Claremont	Nat'l Docks Ry.	Sterling Jct	West Shore
A251	4	do	Jersey City	C. R. R. N. J. float.	Weehawken	do
A259	4	do	do	do	do	do
A259	4	do	Claremont	Nat'l Docks Ry.	Sterling Jct	do
A154	4	do	Easton, Pa	L. & H. R	Maybrook	C. N. E
A165	4	do	Bethlehem Jct	L. & N. E	Campbell Hall	do
A213	4	do				
A201	5	D. L. & W	Taylor	C. R. R. of N. J		
A263	4	C. R. R. N. J.				
A211	4	do	Jersey City			
A198	4	do	do	Floats N. Y. C. H. R. R.		
A232	4	do	Oak Is. Tfr	Penna	Sterling Jct	West Shore
A264	4	do	Claremont	Nat'l Docks Ry.	Weehawken	do
A264	4	do	Jersey City	Float	Phila	P. B. & W
A137	4	do	Phillipsburg	Penna		

* 4=C. R. R. Co of N. J. points. 5=Taylor, Pa., on D/L. & W.

Philadelphia & Reading tariffs—Continued. 621

Jct.	R. R.	Jct.	R. R.	Destination.
ybrook	C. N. E	Hopewell	N. Y. N. H. & H.	New Haven, New London, New Bedford, Fall River, Newport, Providence, Boston, Springfield.
do	do	do		Springfield, Mass.
				Springfield and Boston.
i St. N. Y				New York City (33rd St. and 130th Street).
				Port Reading (local delivery).
				Port Reading (for water transshipment).
				Do.
				Port Richmond (water transshipment inside Capes).
				Do.
				Port Richmond (water transshipment outside Capes).
				Do.
				Port Liberty (for water transshipment).
				Philadelphia, Baltimore, Washington, D. C.

Central Railroad Company of New Jersey tariffs—Continued.

Jct.	P. R.	Jct.	R. R.	Destination.
pewell	N. Y. N. H. & H.			New Haven, New London, New Bedford, Fall River, Newport, Providence, Boston, Springfield, and Harlem River (N. Y.).
do	do			Same.
tterdam Jct	Boston & Me			Boston, Springfield, and Portland, Me.
do	do			Do.
Albany Trf	Bost. & Alby			Do.
do	do			Do.
				Springfield, Mass.
				Do.
				Elizabethport (local), Communipaw, Jersey Ave., Jersey City.
				Do.
				E. Pt. Johnston, Communipaw Pier, Pt. Liberty (water transpt.).
				New York Harbor (Brooklyn, Weehawken, Edgewater).
				New York City (60th Street).
				Jersey City.
				Jersey City, Weehawken.
				Do.
				Philadelphia, Baltimore, Washington, D. C.

621 *Lehigh & New England tariffs.*

Tariff I. C. C. No.	From (*).	Via R. R.	To Junction.	R. R.	Jct.	R. R.
A2407	6	L. & N. E...	Campbell Hall....	C. N. E.....	Hopewell Jct....	N. Y. N. H. & H.
A2399	6	.....do.....	.....do.....	Wt. Sh. N. Y. C. H. R.	Rotterdam Jct..	Boston & Me..
A2369	6	.....do.....	.....do.....	.....do.....	West Albany Tfr	Boston & Al..
A2369	6	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
A2344	6	.....do.....	.....do.....	.....do.....	.....do.....	.....do.....
A2455	6	.....do.....	.....do.....	.....do.....	.....	.....
A2327	6	.....do.....	.....do.....	C. N. E.....	.....	.....

* 6= L. & N. E. points.

Lehigh & New England tariffs—Continued. 621

Jct.	R. R.	Jct.	R. R.	Destination.
.....	.....	.....	.....	New Haven, New London, New Bedford, Newport, Fall River, Providence, Boston, Springfield.
.....	.....	.....	.....	Boston, Springfield, Portland.
.....	.....	.....	.....	Do.
North Grafton..	Grafton & Upton.	.....	.....	? G. & U. Station ?
Chatam.....	Rutland.....	.....	.....	? Rutland R. R. Stations ?
.....	.....	.....	.....	? B. & A., Can. Pac., Cent. Va., Montpelier & W. R., N. Y. C. H. R., Rutland, West Shore, Woodstock Ry. Stations ?
.....	.....	.....	.....	Springfield, Mass.

622 In regard to **Exhibit No. 4**, being the papers relating to the reorganization of the Philadelphia and Reading Railroad Company, Government's counsel now indicate to the examiner portions to be transcribed in the record, as follows:

READING COMPANY,
READING TERMINAL, TWELFTH AND MARKET STREETS,
Philadelphia, March 24, 1897.

To the committee on stock list, New York Stock Exchange:

The railroads, property, and corporate franchises of the Philadelphia and Reading Railroad Company, and the coal lands and property of the Philadelphia and Reading Coal and Iron Company, included under the general mortgage made by said two companies under date of January 3, 1888, were sold by the Trustees of that mortgage by virtue of their powers and of the decree of the Circuit Court of the United States on the 23d day of September, 1896, to Charles Henry Coster and Francis Lynde Stetson.

On the same day all the other assets and property of the railroad company and the Coal and Iron Company were sold under the same decree by the receivers to the same purchasers.

623 These sales were duly confirmed by the Court, and conveyances and transfers of all the property were duly made and delivered, vesting in the purchasers an absolute title, free and discharged of all the liens and charges, except the prior mortgages and charges and expenses particularly mentioned in said decree.

ORGANIZATION.

A large part of the property so purchased was conveyed by the purchasers to the Reading Company. All of the remainder (with a few unimportant exceptions) was conveyed to the Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and Iron Company, and the Reading Iron Company.

READING COMPANY.

The Excelsior Enterprise Company was incorporated by an act of assembly of the State of Pennsylvania, approved May 24, 1871. On January 18, 1873, in pursuance of power conferred by the charter, the stockholders changed the name to "National Company"; and on December 7, 1896, in like manner, the name was changed to "Reading Company."

The validity of this charter and its sufficiency for the purposes of this reorganization were considered by the following counsel, viz: Messrs. George F. Baer, J. D. Campbell, Thomas Hart, jr., Francis Lynde Stetson, Victor Morawetz, John G. Johnson, Samuel Dickson, James Boyd, George L. Rives, F. W. Whitridge, Hon. Edward M. Paxson, and Hon. Edward J. Phelps, and a copy of their joint opinion is submitted herewith. Said opinion concludes as follows:

624 "In our opinion, the Reading Company can legally acquire, receive and hold, and can mortgage and pledge, all the stocks, securities, and properties, including the capital stocks of the new rail*way* company and of the coal and iron company; and it can keep and perform all

the covenants and conditions under which, severally and respectively, these two companies acquired their properties from the purchasers. By a further increase of its capital,[a] the Reading Company can legally issue the common and preferred stock, and the bonds required by the plan of reorganization; and, to secure the payment of these bonds, it can lawfully pledge and mortgage the stock, securities, and properties by it so acquired."

The attorney general of the State of Pennsylvania having subsequently questioned the validity of the charter and having instructed the State officials not to accept certain franchise moneys, the facts of the case were laid before him, and his opinion is also submitted. While questioning certain powers which it is not intended to use, he says:

"After due consideration, I reach the conclusion, most reluctantly, that the Commonwealth of Pennsylvania can not now successfully attack the chartered rights of the Reading Company; at least, the rights of such a nature and character as had been exercised by the 625
corporation prior to January 1, 1874. It had power to do the business in which it was engaged prior to the adoption of the new constitution.

* * * * * * *

"My view of the whole matter is that the charter of the company authorized it to do the kind of business in which it engaged prior to January 1, 1874, which business was of the same general character as that in which it proposes to engage for the purpose of controlling the stocks of the Railway Company and the Coal and Iron Company."

The capital stock of the Reading Company consists of 2,800,000 shares of $50 each ($140,000,000), of which 560,000 shares ($28,000,000) are first preferred, noncumulative 4 per cent; 840,000 shares ($42,000,000) are second preferred, noncumulative 4 per cent; 1,400,000 shares ($70,000,000) are common; all of which (except the original issue of 1,000 shares for cash), as well as bonds as hereinafter stated, have been issued for property acquired. The recipients of said stock have deposited same (except 2,000 shares of common stock) with Messrs. J. Pierpont Morgan and Frederic P. Olcott, of New York, and Henry N. Paul, of Philadelphia, as voting trustees, under an agreement which provides that it shall be held by them 626
until January 1, 1902, and for such further period (if any) as shall elapse before the first preferred stock shall have received 4 per cent per annum cash dividend for two consecutive years, although the voting trustees may, in their discretion, deliver the stock at any earlier date. Until delivery of stock is made by the voting trustees they shall issue certificates of beneficial interest entitling the registered holders to receive, at the time therein provided, stock certificates for the number of shares therein stated, and in the meanwhile to receive payments equal to the dividends collected by the voting trustees upon the number of shares therein stated, which shares, however, with the voting power thereon, are vested in the voting trustees until the stock shall become deliverable, as provided in such certificates of the voting trustees.

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[a] This increase has been duly made.

The stock certificates provide, in substance, that no additional mortgage shall be put upon the property acquired under the plan of reorganization, nor shall the amount of the first preferred stock authorized under said plan be increased, except with the consent, in each instance, of the holders of a majority of the whole amount of each class of preferred stock, given at a meeting of the stockholders called for that purpose, and with the consent of the holders
627 of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately; also that the amount of the second preferred stock shall not be increased except with like consent by the holders of a majority thereof, and a majority of such part of the common stock as shall be represented at the meeting; except that at any time after dividends at the rate of 4 per cent per annum shall have been paid for two consecutive years on the first preferred stock, the company may convert the second preferred stock at par, one-half into first preferred stock and one-half into common stock, and may increase said classes of stock by the necessary amounts. During the existence of the voting trust the consent of holders of like amounts of the respective classes of beneficial certificates is also necessary for any increase of stock other than for the purpose indicated.

The Reading Company reserves the right to redeem at any time either or both classes of its preferred stock at par in cash, if allowed by law.

The Reading Company owns and has pledged for its mortgage hereinafter mentioned:

A—Railway equipment valued at		$16,950,000.00
Real estate of railroad company (this does not include rights of way, depots, &c., or any real estate appurtenant to the railroads) valued at		16,000,000.00
628 Colliers and barges valued at		1,450,000.00
		34,400,000.00

The details of the equipment are as follows:

	Number.	Value.	
Railroad locomotives	791	$3,874,339.80	
Railroad cars	29,625	13,110,666.39	
Marine boats	118	1,439,850.00	
Canal boats	50	19,700.00	
			18,444,556.19

(The old mortgages of the Philadelphia and Reading Railroad Company attach to most of this property.)

B—Stocks and bonds:	
Stock of Philadelphia and Reading Railway Company, at par	20,000,000.00
Bond of Philadelphia and Reading Railway Company, at par	20,000,000.00
Stock of the Philadelphia and Reading Coal and Iron Co., at par	8,000,000.00
Stock of Reading Iron Company, at par	1,000,000.00
Other stocks and bonds (as per schedules annexed) which control about 275 miles of railroad, at par	38,488,246.00
	87,448,246.00
629 C—Mortgages and ground rents, at par	a 266,594.16

D—Philadelphia and Reading Coal and Iron Co.:		
Assets as shown by its books		$95, 435, 453. 79
Less bonds, &c	$17, 874, 606. 46	
Less current liabilities	1, 406, 168. 34	
Less stock of P. & R. C. and I. Co. included in "stocks and bonds"	8, 000, 000. 00	
		27, 280, 774. 80
		68, 154, 678. 99
E Claims against other companies (see schedule annexed)		3, 343, 382. 87
F—Other stocks and bonds:		
Schuylkill Navigation Company [a] preferred and common stock		3, 941, 800. 00
Susquehanna Canal Co.[a] bonds and stock		3, 848. 160. 94
		7, 789, 960. 94
Valued at		1, 000 00
Estimated worth ("A" being subject to undisturbed bonds as stated further on)		193. 613, 902. 02

It will be observed that among the principal assets of the Reading Company is its ownership in the securities of the Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and Iron Company. By means of the former, the practical ownership of the railway company is vested in the Reading Company. The 630
mortgage securing the bond of the railway company provides for additional bonds up to $10,000,000, which, together with like amounts of capital stock, may be issued from time to time to the Reading Company in order to enable the latter to deposit same under its mortgage and obtain the issue of a like amount of the reserved bonds thereunder, when and as the Reading Company advances money for new construction, &c., upon the lines of the railway company and of certain of the companies leased or controlled by it. In this way the lien of the Reading Company's mortgage on the property of the railway company is constantly preserved and strengthened. The railway company's mortgage is stringent in its provisions and allows the issue of the $10,000,000 bonds only in a manner and for purposes which are consistent with the provisions of the Reading Company mortgage.

PHILADELPHIA AND READING RAILWAY COMPANY.

In pursuance of the acts of Assembly of the State of Pennsylvania of May 31, 1887, the before-mentioned purchasers of the rail ad property organized a new corporation under the name of "Philadelphia and Reading Railway Company," and conveyed to it certain railroads and properties acquired by them at the foreclosure sale, in consideration, among other things, of the issue of the entire capital stock ($20,000,000) and of $20,000,000 bonds secured by mortgage. 631

It owns railroad (but no equipment) of an aggregate length of	390. 99 miles.
Of which about 180 miles are double-tracked.	
It has acquired leases of	597. 00 miles.
Of which about 186 miles are double-tracked.	
It leases from Reading Company:	
Equipment, $16,950,000 at 8 per cent (and taxes)	
Colliers and barges, $1,450,000 at 8 per cent (and taxes)	
Delaware River wharves at $50,000 per annum	

[a] These are not under the mortgage of Reading Co. and Coal and Iron Co.

There are undisturbed bonds of the P. & R. R. R. Co. on the property of the railway company, as follows:

	Principal.	Interest.
Prior mortgage loans	$5,241,700.00	$286,357.00
Consolidated mortgage loans	18,811,000.00	1,235,150.00
Improvement mortgage loans, at 4 per cent	9,364,000.00	374,560.00
Consol. mortgage of 1882, 1st series, at 4 per cent	5,767,042.00	230,682.00
Consol. mortgage of 1883, 2d series	1,535.00	.....
Terminal loan, at 5 per cent	8,500,000.00	425,000.00
Bonds and mortgages on real estate	844,871.35	41,439.00
	48,530,148.35	2,593,188.00
The company is also liable for subway bonds of the city of Philadelphia (ultimately to be increased to $3,000,000), at 3½ per cent	300,000.00	10,460.00

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

The decree of confirmation and the conveyances above referred to expressly excepted and released the corporate franchises of the Philadelphia and Reading Coal and Iron Company, so that these corporate
632 rights and powers have been preserved to it; and the purchasers conveyed to that company the principal part of its former property upon condition and in consideration, among other things, that the coal and iron company should become co-obligor in the bonds to be created and issued by the "Reading Company" under the plan of reorganization, and to secure such bonds should make and execute a mortgage on all its properties and franchises.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

A—Owns:		
Coal lands	95,144 acres.	
Valued on the books at		$76,294,997.80
B—Leases:		
Coal lands	7,429 acres.	
C—Also owns:		
Timber lands		659,965.00
Eastern depots		710,724.34
Western depots		657,709.35
Coal on hand and other current assets		7,414,232.30
		9,442,630.99
Stocks of separate coal companies, viz:		
The Preston Coal and Improvement Co.		2,834,150.00
The Fulton Coal Company		317,685.00
The Locust Gap Improvement Co.		525,220.00
The Tremont Coal Company		2,958,850.00
Nearly all of these stocks are subject to the consolidated mortgage of 1871–1911.		
633 The Mammoth Vein Coal and Iron Company	$604,270.00	
The Delaware Coal Company	261,650.00	
These are covered by new mortgage. See Schedule A.		
		7,501,825.00

C—Also owns Continued.		
Bonds of separate coal companies:		
Preston Coal and Improvement, 7 per cent mortgage bonds	$1,087,000	
Tremont Coal Co., 6 per cent mortgage bonds	900,000	
Mammoth Vein Coal and Iron Co., 8 per cent mortgage bonds	209,000	
These are collateral for sinking fund loan of $1,774,000; also covered by new mortgage. See Schedule A		$2,196,000.00
		95,435,453.79
D—It owes for bonds matured and maturing		12,050,606.40
For which bonds of the new general mortgage are to be substituted.		
E—It assumes coll. sinking fund loan of 1892 of R. R. Co.		1,774,000.00
F—It owes coal trust certificates ($4,300,000—$250,000)		4,050,000.00
G—Current liabilities		1,406,168.34
		19,280,774.80

EARNINGS AND FIXED CHARGES. 634

Stated in detail, on completion of reorganization the results of the three companies will show as follows:

READING COMPANY.

Estimate of fixed charges of Reading Company:		
Railroad company mortgages on real estate	$2,276,491.65	$110,000.00
New bonds	50,369,054.00	2,014,762.00
		2,124,762.00
Taxes, etc., say		200,000.00
		2,324,762.00
Estimate of income of Reading Company (based on 1896 results):		
From railway company for rental of equipment, colliers, etc	$1,472,000.00	
From railway company for rental of Delaware wharves	50,000.00	
From railway company interest ($20,000,000)	1,200,000.00	
From securities	781,023.00	
From real estate (formerly of railroad company)	125,000.00	
		3,628,023.00
Surplus		1,303,261.00

RAILWAY COMPANY. 635

Interest on undisturbed bonds, etc	$2,603,648.00
Interest on $20,000,000 bond held by Reading Company	1,200,000.00
Rentals (railroads), say	3,100,000.00
Rentals (equipment, colliers and wharves) as above, say	1,522,000.00
Taxes	175,000.00
Sundries	75,000.00
Total fixed charges of railway company, say	8,675,648.00
Property now controlled by railway company earned, net, in year ending November 30, 1896	8,805,807.00
Surplus	130,159.00

COAL AND IRON CO.

Interest on—	
$12,050,000 new general mortgage 4s to replace outstanding div. coal land bonds and mortgages	$482,000.00
Coal trust certificates, $4,050,000, at 6 per cent	243,000.00
Coal trust commission	50,000.00
	775,000.00
Interest on collateral sinking fund loan, $1,774,000, at 5 per cent	88,700.00
Total	863,700.00
Net earnings, year ending November 30, 1896	238,344.00
Deficit	625,356.00

636 *Earnings of all companies in year ending November 30, 1896.*

(After paying all fixed charges as they will stand on completion of plan.)

	Deficit.	Surplus.
Railway company		$130,159.00
Coal and iron company	$625,356.00	
Reading company		1,303,261.00
Surplus, all companies (to balance)	808,064.00	
	1,433,420.00	1,433,420.00

Stated in the simpler form, which was adopted in the plan of reorganization, and eliminating all accounts between the three companies:

Net earnings of entire property (including income from all sources) in year ending November 30, 1896, were	$9,480,736
Fixed charges of entire property on completion of reorganization will be..	8,672,672
For the present year, pending completion of refunding schemes, etc., they will be perhaps $300,000 or $400,000 more	
Referring to the plan of reorganization, dated December 14, 1895, it will be noticed on page 10 thereof that the fixed charges after reorganization are stated at about	9,300,000
Add for subway so far accrued	10,460
	9,310,460
637 The plan further states that by refunding of high-rate bonds, &c., these charges will be reduced by about	500,000
Making	8,810,460

the ultimate fixed charge under the plan. Under the plan as actually carried out they will not be over $8,672,672.

The accounts of all the companies, as reorganized, have started from November 1, 1896. Eliminating all accounts between the three companies, the results since then are substantially the same as for the corresponding period of last year.

MORTGAGE.

Under date of January 5, 1897, the Reading Company and the Philadelphia and Reading Coal and Iron Company executed a joint mortgage to the Central Trust Company of New York, as trustee, to secure their joint and several bonds, issued and to be issued up to a total of $135,000,000, to be used as follows:

A—To provide for:

Bonds of the Philadelphia and Reading Railroad Company now outstanding, aggregating	[a] $49,459,277
Delaware River terminal bonds and Delaware River Terminal extension bonds	1,509,000
Ground rents and bonds of the Philadelphia and Reading Railroad Company secured by mortgage on real estate	[b] 1,612,063
Bonds of the Philadelphia and Reading Coal and Iron Company, generally known as divisional bonds	2,050 606
	64,630,946
Or, say	64,631,000

B—To be used hereafter:

(*a*) For the acquisition of additional shares of stock, if issued by the Philadelphia and Reading Railway Company, and of additional bonds of said company to be issued under its mortgage, dated November 18, 1896, such stock and bonds to be pledged under the Reading Company's mortgage.

(*b*) For the construction or acquisition, on and after January 1, 1897, of railway lines, extensions, terminal properties, or rolling stock, or for the construction or acquisition of other property on or after that date; or for the construction of betterments, on or after that date; all such construction, or betterments, or property acquired, to be upon, along, or appurtenant to the properties * * * subject to the lien of this indenture * * * or upon, along, or appurtenant to lines of railway or terminal properties of some one or more * * * companies * * * of whose capital stock more than one-half, at the time of such use, shall be pledged under said mortgage, * * * or for the acquisition on or after January 1, 1897, of shares, bonds, or other obligations of any company owning any such line, extension, terminal property, rolling stock, or other property. 639

Not over $1,500,000 bonds to be used in any one calendar year	20,000,000
(*c*) To be issued now as part consideration for property conveyed pursuant to plan of reorganization	50,369,000
	135,000,000

The mortgage contains stringent provisions regulating the use of the new bonds, of the same general character as those in the Southern Railway Company, Erie Railroad Company, and Northern Pacific Railway Company mortgages—with such changes, of course, as are necessary for the requirements of this particular case.

Excepting the mortgages and ground rents, of an aggregate value of $266,594.16, and the canal securities, valued at $1,000, the mortgage covers all the property, including stocks and bonds (excepting such few shares of stock as qualify directors, etc.), owned by the Reading Company, as hereinbefore described, and all the property of the Coal and Iron Company; also, all property hereafter acquired by use of the $20,000,000 reserved bonds.

For a better understanding of the matter it may be stated in general terms that, either by way of direct mortgage or collateral trust, the new mortgage has the security of substantially all of the property formerly of the Philadelphia and Reading Railroad Company, and of the Philadelphia and Reading Coal and Iron Company, as acquired under the court's decree above mentioned, subject to 640

[a] This includes $1,774,000 coll. S. F. bonds of Railroad Co. assumed by Coal and Iron Co.
[b] Of which $767,491.65 are on property owned by Reading Co., $844,571.35 are on property owned by Railway Company.

$64,630,946 of outstanding bonds, which constitute prior liens on parts thereof, and of which $12,050,606 are now being paid off, so that the prior liens will shortly be reduced to about $52,500,000. In addition to thus reducing the prior liens, the new mortgage also covers a vast amount of property of large present earning capacity, which was not included in the former general mortgage; as, for instance, the stocks and bonds which were under the former collateral trust (now paid off) and which yield a present annual income of fully $500,000; also equipment costing about $10,000,000, most of which was formerly under car trusts, etc.

The bonds issued and to be issued under said mortgage are payable, principal and interest, at the office or agency of the Reading Company in the city of New York, in gold coin of the United States of the present standard of weight and fineness, without deduction for any tax or taxes of the United States or any State or municipality thereof which the companies, or either of them, may be required to pay or to retain therefrom under any present or future law. The
641 principal is due January 1, 1997, and the interest July first and January first in each year, at four per cent. per annum. The bonds are in coupon form of $1,000 each, with right of registration of principal and with right of conversion into registered bonds of $500, $1,000, $5,000, and $10,000. Such registry and conversion may be made at the office of Messrs. J. P. Morgan & Co., in New York.

The mortgage provides that the Reading Company shall not and will not in any year declare or pay dividends upon its stock, either common or preferred, * * * unless prior to, or simultaneously with, such declaration it shall deliver to the trustee a statement in writing under its corporate seal showing the amount of anthracite coal mined from lands owned by the coal company and mortgaged hereunder during the year next preceding the declaration of such dividend, and simultaneously shall pay to the trustee a sum equal to five cents per ton on all coal so mined in the preceding year if the aggregate of dividends so declared shall be equal to or shall exceed such sum, and otherwise such lesser sum as shall be equal to the aggregate of dividends so declared.

All sums so received by the trustee shall * * * be applied in purchasing bonds secured by the mortgage in such manner as to it shall seem best and at such prices as it shall deem best, but not exceeding par and accrued interest * * * or with the approval
642 of the Reading Company at higher prices than those above fixed; or such unapplied balance shall be invested in securities in which savings banks at such time shall be authorized under the laws of New York to invest their funds, such securities to be held by the trustee as a part of the trust estate * * *.

All bonds secured by the mortgage, when so purchased by the trustee, shall be canceled.

There are submitted herewith:

Copy of mortgage, with usual certificates.

Copy of stock certificates.

Copy of voting-trust agreement.

Schedule of stocks and bonds owned.

Schedule of equipment.

Schedule of claims against other companies.

Balance sheets of the three companies December 1, 1896.

Opinion of 12 counsel as to Reading Company's charter and powers.
Opinion of attorney general of Pennsylvania as to same.
Opinion of counsel as to new stocks and bonds.
Engineers' certificates.
Specimens of bonds, stock-trust certificates, and discharge warrants.

Application is hereby made for the listing of $62,419,000 bonds of the Reading Company and of the Philadelphia and Reading Coal and Iron Company, being coupon bonds Nos. 1 to 62,419, inclusive, of $1,000 each, issued under their joint mortgage of January 5, 1897, and of the registered bonds into which same may be converted. 643

The bonds for which a quotation is now desired are those issuable at once, as stated above, viz, $50,369,000, and those which are now being used for the retirement and cancellation of the coal and iron company bonds generally known as divisional bonds, viz, $12,050,606.

Of the $50,369,000 bonds about $45,000,000 represent the old general-mortgage bonds deposited under the plan, and the remainder are sold for cash or used for other purposes of the reorganization pursuant to the plan.

EXCHANGE OF SECURITIES.

The basis of exchange of the old securities, or new securities pursuant to the before-mentioned plan of reorganization, is as follows:

644

Old securities.	Receive— New general-mortgage bonds.	First preferred stock-trust certificates.	Second preferred stock-trust certificates.	Common stock-trust certificates.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*
General-mortgage bonds (in addition to all back interest in cash)	100	.....	.....	.....
First preference income bonds (20 per cent assessment paid)	.....	30	100	.....
Second preference income bonds (20 per cent assessment paid)	.....	.....	65	55
Third preference income bonds (20 per cent assessment paid)	.....	.....	35	85
Stock (20 per cent assessment paid)	.....	.....	.....	100
Deferred income bonds (4 per cent assessment paid)	.....	.....	.....	20

OFFICERS AND DIRECTORS.

The directors of the Reading Company are as follows: Joseph S. Harris, A. J. Antelo, Thomas McKean, Chas. H. Coster, Francis Lynde Stetson, Geo. F. Baer, John Lowber Welsh, Albert Foster, George C. Thomas. Officers: President, Joseph S. Harris; vice president, W. R. Taylor; treasurer, W. A. Church; secretary, W. G. Brown.

The directors of the Philadelphia and Reading Coal and Iron Company are as follows: C. Tower, jr., Chas. H. Coster, Thomas McKean, John Lowber Welsh, George F. Baer, George C. Thomas. Officers: President, Joseph S. Harris; vice president, W. R. Taylor; treasurer, W. A. Church; secretary, F. P. Kaercher; assistant secretaries, H. C. Russell and W. G. Brown; general manager, C. E. Henderson; general coal agent, Thos. M. Richards; general superintendent, R. C. Luther. 645

The directors of the Philadelphia and Reading Railway Company are as follows: Chas. H. Coster, Francis Lynde Stetson, John Lowber

Welsh, George F. Baer, George C. Thomas, Thomas McKean. Officers: President, Joseph S. Harris; first vice president, Theodore Voorhees; second vice president, C. E. Henderson; treasurer, W. A. Church; secretary, W. R. Taylor.

READING COMPANY,
By JOS. S. HARRIS, *President.*
THE PHILADELPHIA AND READING
COAL AND IRON COMPANY,
By JOS. S. HARRIS, *President.*

Also pages 20 to 23, inclusive, being the opinion of the Pennsylvania attorney general, as follows:

646 *Opinion of Attorney General of Pennsylvania.*

OFFICE OF ATTORNEY GENERAL,
Harrisburg, Pa., January 2, 1897.

READING COMPANY.

This corporation was created by act of the General Assembly of Pennsylvania, approved May 24, 1871, under the name of "Excelsior Enterprise Company."

By said act of assembly it was vested with all the rights, powers, privileges, franchises, and immunities conferred by an act of assembly entitled "An act to Incorporate the Pennsylvania Company," approved the 7th of April, 1870, and the supplements to said act. It was also given power by vote of the stockholders to change the name of the company and to designate the location of its general office, and such changes were made valid after the filing of a certificate in the office of the secretary of the Commonwealth, signed by the president and secretary and attested by the seal of the said company.

On May 25, 1871, it paid to the Commonwealth the first installment of bonus on its capital stock. On January 18, 1873, as appears by certificate filed in the office of the secretary of the Commonwealth, March 31, 1873, the name of the company was changed from the Excelsior Enterprise Company to the National Company, and its general
647 office was located in Philadelphia.

This department has also been advised, by transcripts of proceedings had in one of the courts of Philadelphia, that the name of the National Company has been duly changed to the Reading Company.

Pending the foreclosure proceedings under the general mortgage made by the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company, it came to the notice of this department that a plan of reorganization was contemplated, by which it was proposed that the stock of the two companies above mentioned should be held, owned, and controlled by the corporation originally known as the Excelsior Enterprise Company, since changed to Reading Company, as above mentioned.

The obvious purpose of this part of the scheme of reorganization seemed to be to escape from that provision of the constitution of 1874 which forbids any incorporated company doing the business of a common carrier to directly or indirectly engage in mining or manufac-

turing articles for transportation over its lines; or, stated differently, the union of the coal company with the railroad company.

The charter under consideration grants powers of the most com- 648
prehensive character, and, if valid, enables the company to control and to engage in almost any business except that of a bank issue.

Upon examination of the records in the auditor general's office it was learned that this corporation, although created in 1871, and constantly keeping up its organization, had practically done little or no business since the year 1875; and it was further learned that on or about November 9, 1896, the company had increased its capital from $100,000 to $40,000,000, and had paid to the Commonwealth the first installment of bonus upon such increase, amounting to nearly $50,000. It was announced also that a further increase of capital was contemplated to the amount of $140,000,000.

The attorney general then lodged with the State treasurer and auditor general a cautionary letter against receiving any further payments of bonus pending an investigation as to the power of the corporation to do the things proposed by it to be done.

By vote of the company, the capital was increased further, as I am informed, from $40,000,000 to $140,000,000, and it was then learned by the company that the further payment of bonus would not be received by the State treasurer until it could be demonstrated that the company still possessed the powers claimed for it.

It was believed by the attorney general that this company fell within 649
the provisions of section 1, Article XVI of the constitution, which reads as follows:

"All existing charters, or grants of special or exclusive privileges, under which a bona-fide organization shall not have taken place and business been commenced in good faith at the time of the adoption of this constitution, shall thereafter have no validity."

The counsel for the Reading Company voluntarily appeared before me on December 16, 1896, and produced certain evidence tending to show that a bona fide organization had taken place and business had been commenced in good faith some time prior to the adoption of the constitution, which became operative January 1, 1874.

It appears from the minute book of the company that the corporators met pursuant to notice August 5, 1871, and organized. By resolution it was provided that a book to receive subscriptions to the capital stock be opened, and on that day a treasurer was appointed for the corporators with power to prepare and open such subscription book.

The next meeting of the stockholders appears to have taken place January 4, 1873, and subscriptions were made to the amount of $50,000. On the same day there was a meeting of the board of directors, elected by the stockholders and an election of president and treasurer.

Another meeting of the board of directors was held January 8, 1873, 650
at which the treasurer of the company reported that he had received $10,000, being the amount paid on the stock subscribed, as above stated. On the same day the president, secretary, and treasurer were by resolution requested to give the notice required by the act of April 21, 1858, to the auditor general of the organization of the company.

January 10, 1873, the board of directors again met, adopted by-laws, and authorized the purchase of a certain claim against the National Railway Company.

On January 11, 1873, a special meeting of the stockholders was held, at which a resolution was offered that the stockholders of the Excelsior Enterprise Company consent and agree that the capital stock of said company shall be increased to 200,000 shares, and by vote increased the same to that amount, of which 100,000 shares were to be classed as common stock and 100,000 shares as preferred stock.

On January 13, 1873, the directors met and authorized the purchase of 75,000 shares of the common stock of the National Railway Company in consideration of 100,000 shares of the common stock of the Excelsior Enterprise Company.

January 14, 1873, the directors again met and transacted business, and again on January 18, 1873, at which meeting, on motion, the agreement submitted by counsel with the National and Stanhope Companies was accepted and the officers directed to sign and seal the same under directions of the company.

651 On May 23, 1873, the directors met and passed a resolution that the draft of the contract with the Philadelphia and Yardleyville Company for the construction of the Philadelphia and Yardleyville Railroad be approved and confirmed, and authorized the president and secretary to execute the same on behalf of the company. At the same meeting the draft of the contract with the National Railway Company of New Jersey was approved and the president and secretary authorized to execute the same.

The company also resolved at the same meeting to indorse and guarantee the bonds of the Philadelphia and Yardleyville Railroad Company to the amount of $1,500,000, and the bonds of the National Railway Company of New Jersey to the amount of $3,500,000, and by said resolution did indorse and guarantee the same and directed the president and secretary of the company to execute said indorsement and guaranty upon said bonds.

The directors again met on May 31, 1873, at which meeting was submitted a form of contract between the Victoria Construction Company and the National Company for building and equipping the railroads of the Philadelphia and Yardleyville Railroad Company and the National Railway Company of New Jersey.

652 On July 2, 1873, the directors again met and authorized the treasurer to receive from the Philadelphia and Yardleyville Railroad Company its bonds as the same shall become due to the company in compliance with the contract.

On December 4, 1873, at a meeting of the board of directors, the National Company, formerly the Excelsior Enterprise Company, adopted and agreed to a contract with the Hamilton Land Association.

December 26, 1873, at a directors' meeting, a communication was received, inclosing a proposal for the rebuilding of the National Railway from Bound Brook to the Delaware River, and referred to the executive committee. At the meeting the secretary reported that the lease on building No. 218 South Fourth Street, Philadelphia, occupied by the company, would expire on the 1st of January the next. On motion the secretary was authorized to rent an office i

Philadelphia. At the same meeting the executive committee was authorized to perfect details whereby the floating debt of the National Railway Company might be settled by preparing loan notes, if deemed advisable, due and payable on the 1st of January, 1875.

Other meetings were held February 4, 18, and 19, 1874, at which certain business was transacted. The directors again met March 8, 1875.

On June 1, 1875, there was an annual meeting of the stockholders at which directors were elected, and the annual meetings have been kept up ever since, except in 1881 and 1882. 653

The only question for consideration is whether or not there was such a bona-fide organization and commencement of business by the Excelsior Enterprise Company, now called the Reading Company, prior to January 1, 1874, as will prevent it from falling within the constitutional provision above cited.

That the company was not successful in business seems clear enough, and I have little doubt but that it was used as a tributary to a more important corporation and for the purposes of the latter. But the company was organized, did do business, and incurred large obligations (many of them may be still outstanding) prior to January 1, 1874.

POWERS GRANTED BY STATE.

The powers written into the charter of the corporation, while, in my opinion, inimical to the best interests of the Commonwealth, are, nevertheless, powers granted by the State, accepted by the corporators, and acted upon by them and those dealing with the company. Nor do I think the non-use of the corporate franchises after 1875 for a long period is ground of forfeiture. The organization as we have noticed has been constantly kept up. The corporation is a private one and the public had no interest in the use of the powers granted. The franchise to be a corporation was expressly retained by the annual elections of officers and appears never to have 654 been abandoned.

After due consideration, I reach the conclusion, most reluctantly, that the Commonwealth of Pennsylvania can not now successfully attack the chartered rights of the Reading Company; at least the rights of such a nature and character as had been exercised by the corporation prior to January 1, 1874. It had power to do the business in which it was engaged prior to the adoption of the new constitution.

Whether the other grants of special privileges, of the varied kinds set forth in the charter, continued after January 1, 1874, is a question that may be determined hereafter when the occasion arises. In construing a charter similar in character to that of the Reading Company in Carothers' Appeal, 118 Pa. St., 489, Mr. Justice Williams, speaking for the court, used the following language:

"The question which we have is not whether a single corporation organized under an 'omnibus charter' may be permitted to gather up into one corporate hand all the powers and franchises of the Commonwealth, but whether this company may do this particular business in which it had embarked its capital. We hold that it may; that the powers granted by the act of incorporation authorized it to engage in this business."

My view of the whole matter is that the charter of the company authorized it to do the kind of business in which it engaged prior to January 1, 1874, which business was of the same general character as
655 that in which it proposes to engage for the purpose of controlling the stocks of the Railway Company and the Coal and Iron Company.

The wisdom of the framers of the constitution of 1874, in denying to the legislature the power to grant special charters, becomes painfully apparent in the consideration of the manifold powers granted by the charter of the Reading Company, and the only consolation of the present generation is that they are not responsible for it.

H. C. McCormick, *Attorney-General.*

Counsel for Government also offer in evidence from the record of the old Reading suit Government Exhibit No. 142 in that case, being an agreement between the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company, dated April 30, 1892, as follows:

Agreement between the Lehigh and Wilkesbarre Coal Company and the Philadelphia and Reading Coal and Iron Company, dated April 30, 1892.

This agreement, made this 30th day of April, 1892, by and between the Lehigh and Wilkesbarre Coal Company, a corporation of Pennsylvania, hereinafter called the Wilkesbarre Company, party of the first part, and the Philadelphia and Reading Coal and Iron Company, also a corporation of Pennsylvania, hereinafter called the Reading Company, party of the second part.

656 Whereas the Wilkesbarre Company is the owner or lessee, by certain indentures of lease, of various lands, mines, and improvements, situate along or near the railroad and branches of the Lehigh and Susquehanna Railroad; and

Whereas the Port Reading Railroad Company, as lessee of the Central Railroad Company of New Jersey, has arranged with the Reading Company for the transportation of all anthracite coal consigned by the Reading Company over the lines and branches of the Lehigh and Susquehanna Railroad Company and of the Central Railroad Company of New Jersey for and during the continuance of the said lease to the said Port Reading Railroad Company; and

Whereas it is proposed on the part of the Wilkesbarre Company to sell and deliver the entire product of its collieries, now operated or hereafter to be opened and operated by it, to the Reading Company to be shipped to market over the lines and branches of the Lehigh and Susquehanna Railroad and the Central Railroad Company of New Jersey, and the Reading Company has proposed to purchase and pay for the same:

Now, therefore, this agreement witnesseth: That the said parties hereto, in consideration of the sum of one dollar by each of the parties paid to the other, and the mutual covenants and stipulations herein contained and written, have agreed and do hereby covenant and agree to and with each other as follows—that is to say:

657 First. The said Wilkesbarre Company hereby sells and agrees to deliver to the Reading Company the entire product of its collieries

now opened and hereafter to be opened and operated, for and during the entire period hereinafter fixed and determined, and the Reading Company hereby agrees to take, receive, and pay for the product of the said collieries and of each of them, for and during the entire term of this agreement, as hereinafter provided; and to ship the same in accordance with the existing agreements between the Lehigh Coal and Navigation Company and the Central Railroad Company of New Jersey.

Second. The Reading Company agrees that from its allotment of cars which it shall receive from time to time from the Central Railroad Company of New Jersey, or any lessee thereof, it shall and will at all times during the continuance of this contract cause to be distributed to the collieries operated by the Wilkesbarre Company such number of cars as will enable the Wilkesbarre Company to mine and ship monthly, in as nearly daily quantities as practicable (Sundays and legal holidays excepted) such an amount of anthracite coal as it can produce from said collieries as a whole, by working the same for as many days and to as full a capacity in each month as the Reading Company works its own collieries. It being understood and agreed that the Wilkesbarre Company shall have the right, from month to month, to apportion its entire product among its various collieries as it shall deem best. 658

And further, in case the collieries located on the lines and branches of the Lehigh and Susquehanna Railroad, other than those of the Wilkesbarre Company, should not, for any cause, continue to ship the same proportion of the total tonnage of the whole anthracite region over the said lines which was shipped from them in 1891, then, and in that case, the Wilkesbarre Company shall be at liberty to mine and deliver, and the Reading Company shall receive and pay for, an amount equal to the deficiency, in addition to the quantity hereto provided to be mined and sold and received and paid for, and the Reading Company shall cause sufficient cars to be supplied therefor, so that there shall always continue to be shipped monthly over the said railroads of the central system an amount of anthracite coal equal in proportion of the total production of anthracite coal in the whole anthracite region to the proportion shipped on the said sytem in the year ending December 31, 1891.

Third. The Reading Company agrees to pay and the Wilkesbarre Company agrees to accept monthly the following prices for the said coal, when prepared in accordance with the standard hereinafter mentioned and delivered in railroad cars at the said breaker, viz:

For all sizes larger than pea coal, sixty (60) per cent of the average "free on board" price received for said sizes at tide points at or near New York between Perth Amboy and Hoboken, both inclusive, for 659
the Wyoming and Lackawanna coals of the Lehigh Valley Coal Company, and the Lehigh and Wilkesbarre Coal Company (hereinafter called Wyoming coal) when the said f. o. b. price is four dollars ($4) per ton or less; when the said average f. o. b. price is more than four dollars ($4) per ton, forty (40) per cent of the increase above four dollars ($4), until the f. o. b. price realized reaches four dollars and fifty cents ($4.50), after which the Wilkesbarre Company shall receive thirty (30) per cent of any advance in the said f. o. b. price above four dollars and fifty cents ($4.50).

For example:

When the f. o. b. price is—	Wilkesbarre Company will receive—	Reading Company will receive—	When the f. o. b. price is—	Wilkesbarre Company will receive—	Reading Company will receive—
$3.80	$2.28	$1.52	$4.50	$2.60	$1.90
3.90	2.34	1.56	4.60	2.63	1.97
4.00	2.40	1.60	4.70	2.66	2.04
4.10	2.44	1.66	4.80	2.69	2.11
4.20	2.48	1.72	4.90	2.72	2.18
4.30	2.52	1.78	5.00	2.75	2.25
4.40	2.56	1.84	Etc.	Etc.	Etc.

* * * * * * *

Seventh. The Reading Company shall and will cause all the coal purchased under the provisions of this contract to pass to or towards its market over and by the lines of the Central Railroad of New Jersey
660 system, it being the intention hereof to provide that the Reading Company as consignor and shipper of said coal shall not and will not divert or cause to be diverted from the transportation lines or terminals comprising the system of the Central Railroad Company of New Jersey the present traffic of said Central Railroad Company of New Jersey, or any traffic which would naturally go to or towards its destination by or over the said system.

* * * * * * *

Twelfth. This contract is expressly upon condition that the Reading Company shall not transfer, assign, or pledge it in any manner, or interest or associate therein any other person or persons, body politic or corporate, without the written consent of the Wilkesbarre Company first had and obtained. And that no judicial or other sale or transfer of any kind whatever, whether upon or under any writ, order, or decree issued by or out of any court, or by any justice of the peace, alderman, or other judicial officer or tribunal, or by virtue of or in compliance with any order or decree of any court of equity or chancery or any proceedings in insolvency or bankruptcy shall have the same effect of transferring the interest of the Reading Company herein for any time or term whatever to any person or persons, body politic or corporate, without the written consent of the Wilkesbarre Company first had and obtained.

* * * * * * *
661

Fourteenth. It being the intention hereof and of the parties hereto that this contract shall continue for a period coincident with the term of the above-recited lease from the Central Railroad Company of New Jersey to the Port Reading Railroad Company, it is hereby further mutually covenanted and agreed that this contract shall be binding upon and enure to the benefit of the parties hereto, and their successors and assigns, respectively, for and during the period of nine hundred and ninety-nine (999) years from the date hereof, unless the said lease of the Central Railroad Company of New Jersey to the Port Reading Railroad Company shall be cancelled or annulled before the termination of that period, and that in that event this contract shall, at the option of either party thereto and upon written notice by such party to the other of its intention to exercise that option, cease

to be in force at and upon the termination, cancellation, or annulment of the said lease.

In witness whereof the parties hereto have caused their corporate seals to be hereunto affixed, attested by their secretaries, and these presents to be signed by their respective presidents the day and year aforesaid.

Witness:

THE LEHIGH AND WILKESBARRE COAL COMPANY,
By J. R. MAXWELL, *President.*

Attest:

W. T. ZELL, *Secretary.* (SEAL.)

THE PHILADELPHIA AND READING 662
COAL AND IRON COMPANY,
By A. A. McLEOD, *President.*

Attest:

F. P. KAERCHER, *Secretary.* (SEAL.)

Counsel for Government also offered in evidence contract dated 663
March 21, 1879, between the Western Union Telegraph Company and the Philadelphia and Reading and Pottsville Telegraph Company.

Defendants' counsel reserve the right to object to this offer.

Contract marked "**Exhibit No. 52,**" and is as follows:

Memorandum of agreement made this twenty-first day of March, 1879 by and between the Western Union Telegraph Company, party of the first part, and the Philadelphia, Reading and Pottsville Telegraph Company, party of the second part, hereinafter respectively designated as the Western Union Company and the Reading Company.

Witnesseth:

Whereas the parties hereto now own and operate lines of telegraph in competition with each other between certain places on the railroads owned, leased, controlled or operated by the Philadelphia and Reading Rail Road Company and Reading and Columbia Railroad Company; and

Whereas the interests of both parties will be promoted by a friendly alliance, and by an agreement which shall provide for an interchange and an equitable division of the business between them:

Now, therefore, the parties hereto have mutually agreed as follows:

First. The Western Union Company agrees to close its offices at Alburtis, Ashland, Birdsboro, Blandon, Centralia, Conshohocken, Catawissa, Donaldson, Emaus, Fleetwood, Frackville, Gilberton, 664
Girardville, Hamburg, Hummelstown, Jalappa, Kutztown, Lebanon Llewellyn, Lost Creek, Lyons, Macungie, Mahanoy, Plane, Minersville, Moselem, Mount Carmel, Myerstown, Mahanoy City, Norristown, Orwigsburg, Phœnixville, Pine Grove, Port Carbon, Port Clinton, Pottstown, Pottsville, Reading, Royersford, Saint Clair, Stanton, Schuylkill Haven, Shamokin, Shenandoah, Tamaqua, Temple, Topton, Tower City, Tremont, Trevorton, Tuscarora, Warnersville, West Shamokin, and Womelsdorf, and the offices of the Reading Company at the said points, together with those now and hereafter maintained by the Reading Company at places where the Western Union Company may have none, shall be designated for convenience or reference as offices in class A.

And the Western Union Company further agrees not to open or maintain an office at any point on any railroad or canal which is now owned, worked, or leased by the Philadelphia and Reading Rail Road Company, or on the Reading and Columbia, or Lancaster and Reading Narrow Gauge Railroads, for the transaction of public telegraph business, without the consent of the Reading Company, except at Philadelphia, Lancaster, Chester, Columbia, Dauphin, Harrisburg, Allentown, Bethlehem, Easton, Catasauqua, Slatington, Rupert, Danville, Milton, Muncy, and Williamsport, which offices, together with those which may be opened by the Reading Company at places where the Western Union Company may have offices on any line of railroad or canal which may now or hereafter be owned, leased, or operated by the Philadelphia and Reading or the Reading and Columbia Railroad Company, shall be designated as offices in class B.

Second. The Reading Company agrees not to open or maintain an office for the transaction of public telegraph business at any point
665 where the Western Union Company now has an office without its consent, except at the places named in the first section, it being expressly understood that nothing herein contained shall prevent the Reading Company from opening and maintaining telegraph offices for the transaction of public telegraph business at such points as it may think desirable on any line of railroad or canal which may now or hereafter be owned, leased, or operated by either the Philadelphia and Reading Railroad Company or the Reading and Columbia Railroad Company.

Third. The receipts of money for telegrams between all points on the railroads and canals now and hereafter owned, operated, or leased by the Philadelphia and Reading Railroad Company, the Reading and Columbia Railroad Company, and the Lancaster and Reading Narrow Gauge Railroad Company shall belong to the Reading Company, except receipts for telegrams between offices in class B, which shall belong to the Western Union Company.

666 Fourth. The Western Union Company shall receive fifteen per cent of the receipts of all telegrams taken in at its offices in class B, including its branch offices in Philadelphia, and given to the Reading Company for transmission to its offices in class A.

Fifth. The Reading Company shall receive fifteen per cent of the receipts of all telegrams taken in at its offices in class B, including its branch offices in Philadelphia, and given to the Western Union Company for transmission to its offices, including those in class B.

Sixth. The Reading Company shall receive fifteen per cent of the receipts and checks of all telegrams sent and received by its employees between its offices in class A and those of the Western Union Company located beyond the territory of the Reading Company. No additional compensation shall be allowed the Reading Company for transacting the said business.

Seventh. If deemed advisable, the Reading Company may close its public telegraph offices at all or any of the places named in class B and run one or more of its wires into the offices of the Western Union Company at said places, and allow the Western Union Company fifteen per cent of the receipts and checks of telegrams sent and received by its employees between its offices and those of the Reading Company in class A. No additional compensation shall be allowed the Western Union Company for the transaction of the said

business. The Reading Company reserves the right to reopen at its 667
pleasure any of said offices which it may have closed.

Eighth. Telegrams to and from points on the lines of other companies which connect with the lines of either of the parties hereto, shall be treated in the same manner as telegrams to and from the stations at which they are transferred. The allowance of fifteen per cent shall apply only to the tolls to and from the places at which telegrams are transferred.

Ninth. The Western Union Company shall have the right to receive from the Pennsylvania, Lehigh Valley, Central Railroad of New Jersey, Delaware, Lackawanna and Western, Philadelphia and Erie, Philadelphia, Wilmington and Baltimore and other railroad companies only at the same rates as charged by the Reading Company, such public telegrams as may be presented at the stations of said railroad companies, in the territory of the Reading Company, and transmit them to any of the offices of the Western Union Company, including offices in class B as required by the agreements between the Western Union Company and said railroad companies, respectively, and retain its proportion of the tolls thereon, but shall transfer to the Reading Company all telegrams received at its offices for offices in class A.

Tenth. The Reading Company shall have the right to receive telegrams from companies in competition with the Western Union Company, only upon the prepayment of its regular local tariff rates, and transmit them to its offices in class A and retain the tolls thereon, but 668
shall not transfer to other companies telegrams received at its offices for points at which the Western Union Company or its connecting lines have offices.

Eleventh. The Western Union Company shall have the right to maintain for its through business, telegraph lines in the territory of the Reading Company, and to run at its own expense said lines into the offices of the Reading Company for testing purposes which shall be attended to by the Reading Company free of charge.

Twelfth. The Reading Company shall have the right to run a suitable number of its wires into the principal office of the Western Union Company in the city of Philadelphia, to facilitate the interchange of business between the parties hereto. The Reading Company shall furnish the operators, instruments, batteries, office fixtures, and stationery required for the transaction of its business in said office, and in consideration of its occupancy of said office, shall pay to the Western Union Company such proportion of the cost of rent, heat, light, transfer, clerical, and delivery expenses of said office as the number of telegrams sent and received by the Reading Company may bear to the total number of telegrams sent and received at the said office by both the parties hereto.

Thirteenth. The rates between offices in class A, also between offices 669
in class A and class B, shall be fixed by the Reading Company.

The rates between offices in class B shall be fixed by the Western Union Company.

The rates between offices in class A on the one hand and offices of the Western Union Company on the other hand excepting offices in class B shall not be changed without the consent of both the parties hereto.

Fourteenth. The Reading Company shall have the right to make special rates between all offices maintained by it on telegrams relat-

ing to the shipment of express goods or miscellaneous freight and coal over any railroad or canal now owned, worked, or leased by the Philadelphia and Reading Railroad Company or the Reading and Columbia Railroad Company or the Lancaster and Reading Narrow Gauge Railroad Company or which may hereafter be owned, worked, or leased by either of said companies, as well as the telegrams relating to the business of the Philadelphia and Reading Coal and Iron Company, or such telegrams may be transmitted free of charge by the Reading Company over its wires between offices maintained by it.

Fifteenth. Public or commercial telegrams between all of the Reading Company's offices in class A and those of the Western Union Company outside of the territory of the Reading Company shall be checked direct, and monthly statements in duplicate of such business shall be made by the Reading Company at each office in
670 class A, and copies thereof forwarded to the proper officer of the Western Union Company.

Offices of the Reading Company located at places in class B shall be regarded as branch offices of the Western Union Company with respect to business with all offices of the Western Union Company, including offices in class B, and such branch offices shall make daily reports of such business, and turn over the receipts therefrom to the Western Union Company in such manner as it may direct; and the offices of the Western Union Company in class B shall be regarded as branch offices of the Reading Company with respect to business with all offices in class A, and shall make daily reports of such business and turn over the receipts therefrom to the Reading Company in such manner as it may direct.

Sixteenth. The receipts of all telegraph business at offices of the Reading Company in class A shall be sent to the treasurer of the Reading Company, and settlement shall be made monthly between the parties hereto.

Seventeenth. The telegraph signs, blanks, and envelopes used at the offices of the Reading Company shall be marked "Philadelphia, Reading and Pottsville and Western Union Telegraph Companies," and the cost thereof shall be paid by the Reading Company.

Eighteenth. Claims for damages and for the refunding of charges on messages arising from error, delay, or nondelivery of such mes-
671 sages shall be assumed by the party whose employees may be at fault, and in cases where the fault can not be located, each party shall assume its share of the amount of damages or refund the tolls in proportion to the revenue derived by it from such messages.

Nineteenth. The Reading Company shall repair the lines of the Western Union Company within the territory of the Reading Company when called upon by the Western Union Company to do so, and the cost of said repairs shall be paid monthly to the said Reading Company by the said Western Union Company.

Twentieth. The Western Union Company shall have the right to attach its wires for through business to the poles of the Reading Company on the East Pennsylvania and other railroads owned, leased, or controlled by the Philadelphia and Reading or Reading and Columbia Railroad Company, and said Western Union Company shall pay to the said Reading Company three dollars per mile of wire per annum for each of the first three wires, and two dollars per mile

of wire per annum for each additional wire which may be maintained by the Western Union Company on any line of poles of the Reading Company.

The Reading Company shall have the right to attach its wires to the poles of the Western Union Company, and shall pay to the Western Union Company three dollars per mile of wire per annum for each of the first three wires, and two dollars per mile of wire per annum for each additional wire which may be maintained by the Reading Company on any line of poles of the Western Union Company. 672

It is understood and agreed, however, that the wires of neither party shall be placed on the poles of the other party unless such poles are fully capable of bearing the additional wires in a safe and proper manner and without interfering with the wires already on such poles.

Twenty-first. The parties hereto agree to connect and exchange business exclusively with each other so far as they legally may. Each party shall receive from the other all telegrams offered at any point of transfer and promptly transmit and deliver them at their destination.

Twenty-second. The Western Union Company (the American District Telegraph Company of Philadelphia assenting) shall transfer to the Reading Company at Philadelphia for delivery all telegrams received for Powers and Weightman and other parties in Philadelphia who may desire their telegrams to be delivered to them by the Reading Company.

Twenty-third. It is understood and agreed that nothing herein contained shall be construed as requiring either party hereto to establish or maintain an office at any point where, in the opinion of its officers, it may be inadvisable to do so.

Twenty-fourth. This agreement shall supersede all previous contracts between the parties hereto, and its provisions shall be and continue in force for the term of ten years from the first day of April, 1879, and thereafter until one year's written notice shall have been 673 given by one of the parties hereto of its intention to terminate the same; and in case of any disagreement concerning the true intent and meaning of any of its provisions, the subject of such difference shall be referred to three arbitrators, one chosen by each party and the third by the two others chosen, and the decision of such arbitrators or of a majority thereof shall be final and conclusive.

In witness whereof the parties hereto have caused the names of their respective presidents to be hereunto subscribed and their corporate seals to be attested the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,

(Signed) NORVIN GREEN, *President.*

(Signed) By A. R. BREWER, *Secretary.*

THE PHILADELPHIA, READING AND POTTSVILLE TELEGRAPH COMPANY,

(Signed) F. B. GOWEN, *President.*

Attest:

(Signed) By HOWARD HANCOCK, *Secretary.*

674 Mr. KINGSBURY. Is it admitted that the stock of the Philadelphia, Reading and Pottsville Telegraph Company was at that time owned by the Reading Railroad and is now owned by the Reading Company?

Mr. HEEBNER. That is admitted.

Mr. Reynolds produced copy of letter dated May 21, 1907, from George F. Baer to James McCrea, called for at the last meeting.

Letter offered in evidence by Government's counsel, marked **"Exhibit No. 53,"** and is as follows:

21ST MAY, 1907.

MY DEAR MR. MCCREA: I enclose you a letter from Mr. E. H. Jennings, president of the Anthracite Coal Company of Pittsburgh. The situation is this:

The Anthracite Coal Company is the successor of the Natalie Coal Company. The Natalie Coal Company was an operation on our system; they built a short line of railroad to connect with us. Subsequently they obtained a lease from your coal company to a tract of land adjoining their Natalie colliery. It was only fair that you should have the transportation of the coal from your own lands; therefore, a connection was made with your system for the purpose of transferring this coal to you.

The Natalie Coal Company failed and was reorganized, as I under-
675 stand it, as the Anthracite Coal Company. In the reorganization the Natalie Railroad passed into the hands of creditors other than those of the Natalie Coal Company.

Now, the Anthracite Coal Company propose to us to take the Natalie Railroad and operate it. We find on examination that it would require an expenditure of about $40,000 to put the road in working order. They offer to transfer their rolling stock (valued at $25,000) to us in part payment of this expenditure, and the balance to be credited on account of rental. The rental is to be between $4,000 and $5,000 a year; the exact figures were not agreed upon.

Mr. Jennings, whom you know, has associated Messrs. Madeira, Thorne, and Neal with him in the proposed operation of this colliery. They assert that that Natalie property can not be worked advantageously without obtaining from your company a lease on your adjoining lands. I understand that Mr. Williams has objected to giving this lease for the reason that it will be profitable for him to mine this same coal from one of your collieries. Mr. Thayer suggested that your company would make this lease, provided, in addition to the traffic from this leased land, your company should have a percentage of the traffic from the Natalie Company's lands. To this we have objected for the following reasons:

1st. The Natalie operation was on our land, and we were, therefore, entitled under the general comity between the companies to retain this tonnage.

676 2nd. We could not afford to spend $40,000, in repairing this railroad and take the risks of the successful operation of the Natalie colliery, and turn any portion of the traffic over to you.

I frankly told these gentlemen that rather than do that we would allow your company to take the Natalie Railroad and thereby deprive ourselves of all the tonnage. My theory was, that as we can produce from our own collieries sufficient coal to supply the demands along our

system we would lose very little by allowing this coal to be sold on your system. Mr. Jennings and his friends, however, objected to this. They naturally want the advantage of the markets on our line.

Under these circumstances, I suggested that the matter be postponed until your return. I am ready to take the matter up with you at any time it may suit your convenience. You see these gentlemen are naturally very anxious to have an early answer.

Yours truly,

(Signed) GEO. F. BAER, *President.*

Mr. JAMES MCCREA,
President Pennsylvania Railroad Company, Philadelphia.

At the request of counsel for Government, counsel for the various 677
defendant companies produced certain price circulars of various companies.

Philadelphia and Reading Coal and Iron Company produced, in compliance with the demand, circular for September 1, 1913, issued by that company, and the circulars of April 1st, May 1st, June 2nd, July 1st, and August 1st, 1913, the Government having requested only April 1st; nevertheless the defendants' counsel produced the others, because without them it is not fully clear what the circular price is from month to month.

Circulars marked **Exhibits 54, 55, 56, 57, 58, 59, and 60**, and are as follows:

General price circular No. 6,
1913.

[Branch offices: New York, 141 Liberty Street; Boston, 141 Milk Street.]

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, September 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the Capes of the Delaware, and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND). 678

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

R. J. MONTGOMERY,
General Coal Agent.

679 *General price circular No. 1, 1913.*

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, April 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the Capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

680 All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of fifty cents per ton will be allowed from the above prices, on coal shipped during the month of April, 1913.

R. J. MONTGOMERY,
General Coal Agent.

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, Pa.

Conditions for the sale and shipment of coal.

1. All prices subject to change without notice.

2. The coal is designated by the names known in the company's business; those names are used in selling or quoting prices, and parties are particularly requested to make use of the same in giving their orders.

3. All sales shall be at invoice weights as taken at point of shipment, and to be made for cash or with six per cent interest added in all cases for any deferred payment—the interest to commence from the date of the bill of lading.

4. The company, when requested by purchasers, will use their best efforts to procure vessels for the transportation of coal and to effect insurance thereon, but in so doing will not assume nor is it to be charged with any responsibility in relation thereto; and should the 681
company be unable to procure suitable vessels, or the purchasers fail to furnish them within the month during which purchase was made, the company reserves the right to cancel the order to the extent of the unfilled portion thereof.

5. Coal, when shipped on board of vessels, is to be considered as delivered to, and thereafter at the risk of, the purchaser. Bills of lading, receipts or other evidences of shipment to be proof of delivery, both as regards time and quantity.

6. Reasonable exertions will be made by the company to fulfill its contracts for the delivery of coal, but if at any time the operations or business of the company at the mines, or on railroads or canals, shall be interrupted by floods, breaks, accidents, or by combinations, turnouts or strikes among the miners, boatmen, or other employees, either for an increase of wages or on account of a reduction thereof, or for any other cause, or by casualties of any kind, the obligation of the company to deliver coal under its contracts or agreements may, at its option, be cancelled to the extent of the average quantity the purchaser would be entitled to receive under their contracts or agreements during the period of such interruption; and the company shall not be liable for damages by reason of such nondelivery, or for demurrage of vessels or otherwise.

R. J. MONTGOMERY,
General Coal Agent.

APRIL 1ST, 1913.

General price circular No. 2, 1913. 682

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, May 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of forty cents per ton will be allowed from the above prices on coal shipped during the month of May, 1913.

R. J. MONTGOMERY,
General Coal Agent.

683 *General price circular No. 3, 1913.*

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, June 2nd, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of thirty cents per ton will be allowed from the above prices on coal shipped during the month of June, 1913.

R. J. MONTGOMERY,
General Coal Agent.

684

General price circular No. 4,
1913.

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, July 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the Capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

NEW YORK.

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$5.00	$5.25	$5.25	$5.50
Hard white ash			5.10	5.25	5.25	5.50
Shamokin				5.50	5.50	5.50
Schuylkill red ash				5.75	5.75	5.75
Lorberry				5.75	5.75	5.75
Lykens Valley			6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of twenty cents per ton will be allowed from the above prices on coal shipped during the month of July, 1913.

R. J. MONTGOMERY,
General Coal Agent.

685

General price circular No. 5,
1913.

(Branch offices: New York, 143 Liberty Street; Boston, 141 Milk Street.)

THE PHILADELPHIA & READING COAL & IRON CO.,
OFFICE OF THE SALES DEPARTMENT,
Reading Terminal, Philadelphia, August 1st, 1913.

Taking effect this date, the prices of this company's coals, delivered on board vessels at Port Richmond, Philadelphia, Pa., for shipments beyond the Capes of the Delaware and New York shipping port, subject to our printed conditions of sale, will be as follows:

PHILADELPHIA (PORT RICHMOND).

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash			$4.75	$5.00	$5.00	$5.25
Hard white ash			4.85	5.00	5.00	5.25
Shamokin				5.25	5.25	5.25
Schuylkill red ash				5.50	5.50	5.50
Lorberry				5.50	5.50	5.50
Lykens Valley			5.75	6.00	6.00	6.00

	Lump.	St. Boat.	Broken.	Egg.	Stove.	Chest.
Free white ash	.....	.....	$5.00	$5.25	$5.25	$5.50
Hard white ash	.....	.....	5.10	5.25	5.25	5.50
Shamokin	.....	.....	.....	5.50	5.50	5.50
Schuylkill red ash	.....	.....	.....	5.75	5.75	5.75
Lorberry	.....	.....	.....	5.75	5.75	5.75
Lykens Valley	.....	.....	6.00	6.25	6.25	6.25

All remittances to be made by check to the order of the Philadelphia & Reading Coal & Iron Co., H. E. Paisley, treasurer, Reading Terminal, Philadelphia, Pa.

A reduction of ten cents per ton will be allowed from the above prices on coal shipped during the month of August, 1913.

R. J. MONTGOMERY,
General Coal Agent.

686 Mr. REYNOLDS. The Lehigh and Wilkes-Barre Coal Company does not issue a circular in New York, but it has, however, through its New Jersey Company issued circulars for the Newark business, and it issues line circulars in the interior, but the New York tide business is not covered by any circular.

Mr. Reynolds produced circulars of the Lehigh and Wilkes-Barre Coal Company of New Jersey, being the selling agent in New Jersey at Newark and vicinity of the Lehigh and Wilkes-Barre Coal Company, for April 1st, 1913, and September 1st, 1913.

Circulars offered in evidence by counsel for Government (marked "**Exhibits 61 and 62**"), as follows:

687 LEHIGH & WILKES-BARRE COAL CO. OF N. J.

Pockets: Ferry and Congress Street, Market and Bowery Street. Office: 48 Congress Street; L. D. Phone 536 Market; Newark Phone 536.)

NEWARK, N. J., *April 1st, 1913.*

The following prices will be charged for this company's coal at their pockets during the month of

APRIL, 1913.

(Fifteen cents per ton less for coal in cars on track.)

	Wilkes-Barre, gross. (2,240 lbs.)	Honey-brook, gross. (2,240 lbs.)	Net. (2,000 lbs.)
Broken	$4.65	$4.65	$4.15
Egg	4.90	4.90	4.38
Stove	4.90	4.90	4.38
Chestnut	5.15	5.15	4.60
Pea	3.65	.....	3.26
Buck No. 1	2.90	.....	2.59
Buck No. 2	2.40	.....	2.14

Terms cash.

Orders that are accepted will be subject to our ability to fill during the current month.

We will make every effort to fill orders promptly, but we shall not be held responsible for failure to ship, by reason of suspension of mining, or any other cause beyond our control.

The company reserves the right to change prices at any time without 688
notice, and orders sent in will not bind the company until accepted.

A. DENITHORNE, *President.*

LEHIGH & WILKES-BARRE COAL CO. OF N. J.

(Pockets: Ferry and Congress Street, Market and Bowery Street. Offices: 48 Congress Street; L. D. Phone 648 Market; Newark Phone 536.)

NEWARK, N. J., *September 1st, 1913.*

The following prices will be charged for this company's coal at their pockets during the month of

SEPTEMBER, 1913.

(Fifteen cents per ton less for coal in cars on track.)

	Wilkes-Barre, gross. (2,240 lbs.)	Honey-brook, gross. (2,240 lbs.)	Net. (2,000 lbs.)
Broken	$5.15	$5.15	$4.60
Egg	5.40	5.40	4.82
Stove	5.40	5.40	4.82
Chestnut	5.65	5.65	5.05
Pea	3.65	.....	3.26
Buck No. 1	2.90	.....	2.59
Buck No. 2	2.40	.....	2.14

In addition to the prices quoted above, there will be charged:

Pennsylvania State tax of two and one-half per cent. of the market value of the coal at the mines.

Terms cash.

Orders that are accepted will be subject to our ability to fill during the current month.

We will make every effort to fill orders promptly, but we shall not be held responsible for failure to ship, by reason of suspension of mining, or any other cause beyond our control.

The company reserves the right to change prices at any time with- 689
out notice, and orders sent in will not bind the company until accepted.

A. DENITHORNE, *President.*

Mr. Drinker stated that he was informed by Mr. Davies, general coal agent of the Lehigh Coal and Navigation Company, that the Navigation Company issued no price circulars during 1913.

Mr. Heebner produced statement of anthracite coal purchased by Philadelphia and Reading Coal and Iron Company during the years ended December 31, 1911 and 1913.

Government's counsel offered in evidence statement produced by Mr. Heebner (marked "**Exhibit No. 63**"), as follows:

Exhibit No. 63.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Statement of anthracite coal purchased during years ended December 31, 1911 and 1913.

FROM WHOM PURCHASED.

Month.	Total tonnage purchased.	Enterprise Coal Co.	St. Clair Coal Co.	Pine Hill Coal Co.	Excelsior Coal Co. (Excelsior colly).	Excelsior Coal Co. (Corbin colly).	Furnace Coal Co.
1911.							
January	84,188.19	18,173.12	30,349.05	10,270.13	8,335.17	14,128.05	2,931.07
February	74,470.19	18,425.12	26,705.00	8,269.08	7,421.01	10,413.18	3,236.00
March	70,014.05	21,252.13	14,550.04	9,045.03	9,561.15	11,216.14	4,387.16
April	61,560.05	19,036.06	11,133.14	7,655.07	7,866.19	13,018.18	2,789.01
May	61,378.03	21,270.15	6,362.17	9,014.01	7,866.10	14,425.14	2,338.06
June	54,133.19	17,469.05	.....	10,169.08	8,971.17	14,955.02	2,568.07
July	40,812.08	10,097.19	1,530.10	8,019.12	7,295.10	12,238.15	1,630.02
August	55,709.18	11,783.07	21,206.13	5,891.11	7,580.09	9,248.07	.....
September	66,867.06	16,446.05	24,498.19	8,205.13	9,194.02	3,522.07	.....
October	72,054.09	17,473.17	23,185.11	9,453.01	8,611.01	14,330.10	.....
November	64,759.03	17,031.11	19,848.01	6,085.11	7,582.06	14,211.14	.....
December	70,356.16	17,050.04	21,740.12	9,462.18	8,446.17	13,656.05	.....
	777,246.01	205,511.06	201,211.06	101,542.06	93,733.15	150,366.09	19,880.19

FROM WHOM PURCHASED.

Month.	Total tonnage purchased.	Enterprise Coal Co.	St. Clair Coal Co.	Pine Hill Coal Co.	Maderia Hill & Co.	Thorne, Neale & Co. (Inc).	Norton Co. C. D.	Weston Dodson & Co.
1913.								
January	29,755.07	19,110.19	2,867.09	7,776.19				
February	23,086.08	15,648.09		7,437.19				
March	26,297.06	17,195.07	2,122.18	6,979.01				
April	27,056.16	13,267.06	4,562.04	7,739.11	1,487.15			
May	26,399.16	14,162.01	5,155.04	7,082.11				
June	23,285.17	10,871.00	4,544.16	7,870.01				
July	17,860.01	9,054.17	3,709.17	5,095.07				
August	15,298.07	7,524.09	3,332.15	4,441.03				
September	17,599.19	9,000.17	4,124.03	4,474.19				
October	21,039.09	8,693.02	5,246.03	7,160.04				
November	18,439.06	6,507.02	4,785.17	7,146.07				
December	20,675.10	6,041.13	4,634.15	5,156.15	1,593.10	535.08	362.03	2,351.06
	266,794.02	136,987.02	45,086.01	78,390.17	3,081.05	535.08	362.03	2,351.06

691 Government's counsel also offered in evidence statement produced by Mr. Heebner, made by the Philadelphia and Reading Coal and Iron Company, of the total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1898 (marked "**Exhibit No. 64**"), as follows:

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1898.

Points of distribution.	By rail to tidewater for transshipment.	Tidewater distribution.	All-rail distribution.	Total tonnage.
Port Richmond, Phila	1,096,600			
Port Reading, New York Harbor	986,677			
Port Liberty, New York Harbor	129,126			
Locust Point, Baltimore	57,149			
Canton piers, Baltimore	12,576			
Taken from stock	63,210			
Total	2,345,338			
Canada Provinces		6,424		6,424
Portland, Maine		93,058		93,058
Portsmouth, N. H		49,373		49,373
Hartford, Conn		13,378		13,378
Boston, Mass		433,897		433,897
New England States		784,975	108,400	893,375
New York		786,826	87,552	874,378
Philadelphia, Pa		70,619	1,534,431	1,605,050
692 Baltimore and Washington		38,908	420,035	458,943
Charleston, S. C		14,148		14,148
New Orleans, La		2,513		2,513
Galveston, Tex		7,836		7,836
Southern points		38,749	117,248	155,997
West Indies and Mexico		4,634		4,634
P. & R. Railway, supply			541,739	541,739
P. & R. System, less Philada			1,516,345	1,516,345
Local points, other railroads			26,230	26,230
N. Y. C. & H. R., Buffalo and East			134,910	134,910
R. W. & O., Buffalo and East			26,527	26,527
B. R. & P., Buffalo and East			4,632	4,632
Erie, Buffalo and East			132,853	132,853
W. N. Y. & P., Buffalo and East			2,762	2,762
B. & O., Buffalo and East			16,575	16,575
West of Buffalo			206,278	206,278
Canada			25,532	25,532
Western yards, rail and lake:				
Illinois—Chicago	240,158			
Wisconsin—				
Milwaukee	81,810			
W. Superior	30,943			
Minnesota—				
Minneapolis	16,445			
Duluth	9,849			
St. Paul	12,814			392,019
Total	392,019	2,345,338	4,902,049	7,639,406

Government's counsel also offered in evidence statement produced 693
by Mr. Heebner, made by the Philadelphia and Reading Coal and Iron Company, of the total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1905 (marked "**Exhibit No. 65**"), as follows:

THE PHILADELPHIA AND READING COAL AND IRON COMPANY. 694

Total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31st, 1905.

Points of distribution.	By rail to tidewater for transshipment.	Tidewater distribution.	All-rail distribution.	Total tonnage.	
Pt. Richmond, Philada	1,540,406				
Pt. Reading, N. Y. Harbor	1,406,653				
Pt. Liberty, N. Y. Harbor	54,534				
Locust Point, Baltimore	55,916				
Taken from stock	50,905				
Total	3,108,414				
Canada Provinces		21,902		21,902	
Portland, Maine		115,597		115,597	
Portsmouth, N. H		53,778		53,778	
Hartford, Conn		35,752	9,059	44,811	
Boston, Mass		356,789	103	356,892	
New England States		1,026,462	123,238	1,149,700	
New York		1,170,509	101,153	1,271,662	
Newark, N. J		12,544		12,544	
Philadelphia, Pa		61,472	1,771,556	1,833,028	
Baltimore and Washington		99,163	454,742	553,905	
Charleston, S. C		16,760		16,760	
New Orleans, La		17,496		17,496	
Galveston, Texas		13,744		13,744	
Southern Points		85,033	255,376	340,409	
Cuba, etc		21,413		21,413	695
P. & R., supply			1,166,750	1,666,750	
P. & R. system, less Phila			2,341,190	2,341,190	
Local points, other railroads			49,903	49,903	
N. Y. C. & H. R., Buffalo and East			211,505	211,505	
R. W. & O., Buffalo and East			33,591	33,591	
B. R. & P., Buffalo and East			9,700	9,700	
Penna. R. R., west via Hbg. & Milton			348,266	348,266	
N. Y. C. & B. & O. w. of Buffalo:					
Ohio			80,269		
Indiana			50,641		
Michigan			130,512	261,422	
Canada, west			114,819		
Canada, east			20,274	135,093	
Western yards, rail and lake:					
Points in Indiana	5,889				
Illinois—					
Chicago	79,699				
Other points	138,750				
Wisconsin—					
Milwaukee	24,761				
Superior	8,795				
Other points	16,273				
Minnesota—					
Minneapolis	27,771				
St. Paul	25,380				
Other points	9,156				696
West., N. W., & So. W. States	91,228			427,702	
Western points by lake:					
Ohio	677				
Michigan	54,407				
Illinois	9,042				
Wisconsin	7,507				
Canada, West	5,644			77,277	
Geneva and Erie Canal	7,796			7,796	
Total	512,775	3,108,414	7,272,647	10,893,836	

697 **Government's counsel also offered in evidence statement produced by Mr. Heebner made by the Philadelphia and Reading Coal and Iron Company of the total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1913 (marked "Exhibit No. 66"), and is as follows:**

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Total tons of anthracite coal sold, and points of distribution by rail and water, for calendar year ended December 31, 1913.

	Points of distribution.	By rail to tidewater for transshipment.	Tidewater distribution.	All-rail distribution.	Total tonnage.
	Port Richmond, Phila.	1,623,390			
	Port Reading, New York Harbor	1,064,797			
	Locust Point, Baltimore	33,186			
	Added to stock	183,187			
	Total	2,538,156			
	Canada Provinces		10,876		10,876
	Portland, Maine		164,996		164,996
	Portsmouth, New Hampshire		71,520		71,520
	Hartford, Conn.		32,049	21,593	53,642
	Boston, Mass.		301,412	9,213	310,625
	New England States		921,133	248,329	1,169,462
	New York		713,855	197,408	911,263
698	Philadelphia, Pa.		97,299	931,360	1,028,659
	Baltimore and Washington		107,551	363,290	470,841
	Charleston, S. C.		30,637		30,637
	New Orleans, La.		12,464		12,464
	Galveston, Tex.		12,714		12,714
	Southern points		31,628	241,573	273,201
	Cuba, etc.		30,022		30,022
	P. & R., supply			1,577,681	1,577,681
	P. & R. system, less Philada.			1,795,538	1,795,538
	Local points, other railroad			24,993	24,993
	N. Y. C. & H. R., Buffalo and East			208,035	208,035
	N. Y. C. & B. & O., west of Buffalo:				
	Ohio			98,440	
	Indiana			45,595	
	Michigan			109,002	
	Canada, west			79,655	
	Canada, east			41,995	374,687
	Western yards, rail and lake:				
	Points in Indiana	13,972			
	Illinois—				
	Chicago	128,776			
	Other points	131,801			
	Wisconsin—				
	Milwaukee	9,617			
	Superior	12,942			
	Other points	12,717			
699	Minnesota—				
	Minneapolis	35,994			
	St. Paul	17,201			
	Other points	15,049			
	West., N.W., & S.W. States	80,893			458,952
	Western points by lake:				
	Michigan	24,749			
	Wisconsin	30,889			
	Canada, west	65,669			121,307
	Geneva and Erie Canal	3,600			3,600
	Total	583,859	2,538,156	5,993,700	9,115,715

700 Mr. KINGSBURY. In the proceeding before the Interstate Commerce Commission, docket No. 4914, page 706 of the minutes, I find the following statement by Mr. Reynolds, in answer to the question by Mr. Hickey. Are you willing to make the same statement of record here?

"Mr. HICKEY. Do we understand that previous to December 6 (1912) that the Lehigh and Wilkes-Barre Coal Company sent telegrams free over the wires of the Central Railroad Company of New Jersey?

"Mr. REYNOLDS. That is correct."

Mr. REYNOLDS. That is correct. Since that date they have not.

Mr. KINGSBURY. I also find in the same record, at page 766 of the stenographer's minutes, a quotation from Central Railroad Company of New Jersey I. C. C. A. No. 90, as follows:

In compliance with the tenth covenant of the lease from the Lehigh Coal and Navigation Company, under which the Central Railroad Company of New Jersey operates the Lehigh and Susquehanna Railroad, a lateral allowance is made out of herein-named rates to the Lehigh Coal and Naviagation Company on all anthracite coal originating on the latter's track in the Panther Creek, Nesquehoning, and Hacklebarnie districts mined and shipped by it when coming via Hauto and Nesquehoning and Mauch Chunk gateways.

The covenant referred to is set forth in the lease of March 31, 1871, 701
and recorded in Deed Book No. 262, page 480, of Luzerne County, and Deed Book No. 43, page 339, of Lackawanna County, Pennsylvania.

Is it admitted that that is a correct quotation from the tariff?

Mr. REYNOLDS. That is admitted.

Mr. KINGSBURY. On page 916, I read the following statement by Mr. Reynolds:

In answer to Mr Hickey's question up to and including part of August, 1912, the Central Railroad Company of New Jersey owned and operated seagoing tugs and barges carrying coal between Port Johnson, New Jersey, and New England ports, such as Boston. On August 7, 1912, an arrangement was made by which the fleet was to be leased, with the option to buy, to the Lehigh and Wilkes-Barre Coal Company. It was agreed that an immediate transfer be made to the Lehigh and Wilkes-Barre Coal Company, and that the latter should take physical possession of the tugs and barges without waiting final execution of the papers. The Lehigh and Wilkes-Barre Coal Company on August 13 exercised the above option and purchased the fleet, paying two hundred thousand dollars on account of the purchase price. Bills of sale were executed October 4, 1912, for each of the vessels, and those bills of sale are all on record in the customshouse in New York. On October 1st, 1912, the Lehigh and Wilkes-Barre Coal Company published a notice of its taking over full operation of the boats, and paid the balance of the purchase price, which purchase price 702
was reached on an arbitration appraisal in the usual form of each side choosing an appraiser, and they choosing a third. Prior to that time coal was carried on these barges for the Lehigh and Wilkes-Barre Coal Company, but no tariff rate for the carriage of that coal was in effect.

Mr. REYNOLDS. The same admission is made in this regard.

Mr. KINGSBURY. At page 1002 of the same proceeding there is a statement that the balance due to the Reading Company from the Philadelphia and Reading Coal and Iron Company on October 17,

1913, was the sum of $74,980,171.62. I read the following question and answer from the record in the proceeding:

"Mr. HICKEY. Is the Philadelphia and Reading Coal and Iron Company indebted to the Reading Company for upwards of seventy millions of dollars?

"Mr. WHITE. Yes.

"Mr. HICKEY. Does this document show the exact amount on October 17, 1913 [paper handed witness]?

"Mr. WHITE. Have you got an annual report here?

"Mr. HICKEY. What date?

"Mr. WHITE. January 30, 1896?

"Mr. HICKEY. My question was: Does that document show the exact amount of that indebtedness on October 17, 1913?

"Mr. WHITE. Yes, that is right. Is that your mark on the corner there, Mr. Heebner [indicating]?

"Mr. HEEBNER. What is this?

703 "Mr. HICKEY. A document produced under subpœna. The question was: Does that document show the exact amount of that indebtedness on October 17, 1913?

"Mr. HEEBNER. As it appears upon the books?

"Mr. WHITE. Yes. That is your mark on the corner?

"Mr. HEEBNER. You mean as it appears upon the books?

"Mr. WHITE. Yes.

"Mr. HICKEY. Is that amount $74,980,171.62?

"Mr. WHITE. $74,980,171.62."

Adjourned until Monday, March 2, 1914, at 11 o'clock a. m.

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704 MARCH 2, 1914.

Met pursuant to adjournment.

Present: Mr. Frederic R. Coudert, Mr. Thurlow M. Gordon, and Mr. Howard Thayer Kingsbury, for the Government; Mr. Jackson E. Reynolds, for the Phila. & Reading Ry. Co., Phila. & Reading Coal & Iron Co., Reading Company, Central Railroad Co. of New Jersey, Lehigh & Wilkes-Barre Coal Co.

By Mr. REYNOLDS. Counsel for the other defendants by telephone consented to proceeding in this manner provided full reservation in their favor as to the admissibility of the evidence is noted on the record, such objections to be on any available ground.

Mr. KINGSBURY. Counsel for the Government have no objection to such reservation.

Mr. Heilner being called, testified as follows:

By Mr. KINGSBURY:

Q. Will you give your full name, please?

A. Percival D. Heilner.

Q. What is your official position, Mr. Heilner?

A. Vice president and general agent.

Q. Of the Lehigh & Wilkes-Barre Coal Co.?

A. Yes, sir.

Q. Do you hold any office in the Phila. & Reading Railroad Co. or Phila. & Reading Coal & Iron Co.?

A. No, sir. 705

Q. What in general are your official functions, Mr. Heilner?

A. Well, to market the coal in such a way that I can get the money for it.

Q. Are you the head of the coal-selling department of the company?

A. Well, yes.

Q. What methods do you employ in finding a market for your company's coal?

A. What do you mean by methods, Mr. Kingsbury?

Q. Well, how do you go about it? Do you send out advertisements, or do you send circulars to different coal dealers; do you employ a field force to solicit orders, or what do you do?

A. Well, I have been in this market for a good many years; my acquaintance is large among the buyers, and I know them all very well, and I see them, talk to them, extol the virtues of our coal, our service, and as a consequence the business comes.

Q. In what markets is the coal principally sold?

A. Well, New York is, of course—perhaps our largest market, New York City, New England all rail, Boston by water. Occasionally we go as far as Portland, Maine.

Q. Does any of your coal go to Philadelphia?

A. No, sir.

Q. Does all of your coal go over the Jersey Central Railroad?

A. It originates on the Jersey Central—starts from there. 706

Q. And all of it that comes to New York goes over the Jersey Central?

A. Yes, sir.

Q. I show you a price circular, furnished to me by counsel for your company, of September 1st, 1913, showing prices at New England points, and ask you if that is correct?

A. Yes, sir; as far as I recollect it, that is correct.

Q. Do you have any printed price circulars?

A. No, sir.

Q. None for any of your points of distribution?

A. We have none that emanate from my office. The lineman at Elizabeth issues a circular of his own—that is, under his own signature—simply to send around to the small dealers on the line. That is the only circular we ever issue.

Mr. Reynolds. And the Newark——

A. Well, that is another man.

Q. Well, how are your prices fixed? Do you issue instructions to your various subordinates as to the prices to be charged at the various points?

A. Well, I consult with Mr. Baer at times as to the various prices, and then I notify these people that buy from us what the prices are.

707 Q. Do you personally make up various schedules?

A. For prices at the various points of distribution—after consulting with Mr. Baer, early in the spring—it works along according to these prices that you have, right along through the season as a rule.

Q. What I am getting at is this: Do you at any certain time in each year make up a schedule of prices—for example, for coal to be sold in New York—and communicate that schedule to your local representatives in New York?

A. Well, the prices are made in the spring, in April as a rule, and, of course, I notify these different people of the prices we have made.

Q. Whom do you notify?

A. Well, I notify all our customers to begin with, and, of course, first I notify our own people; that is, this lineman that I have spoken of and our man here in Boston.

Q. You say you fix your prices after consulting with Mr. Baer?

A. Yes.

Q. Does he ultimately determine the price that you are to charge, or do you fix it and simply take his views into consideration?

A. Sometimes we do not agree as to our views, and I think at times I can get more money for coal than he wants me to ask.

Q. Which controls in such a division of opinion?

A. Mr. Baer is the president.

708 Q. So that if you advocate one price and he advocates another, and after discussion you do not reach an actual agreement, the price he fixes is the one that is issued officially as the price to be charged?

A. Yes; after consulting with him, he decides whether he is correct or whether he will take my view or not.

Q. Can you state either from memory or from any records what your New York prices for the four sizes stated in your New England price list were on this same date, September 1, 1913?

A. You mean, Mr. Kingsbury, on board the vessel at Port Johnson, as that coal is all carried down by water?

Q. Well, how do you state your prices, as on board vessel or as delivered in New York?

A. The water-borne coal, we state the price on board.

Q. That is for coal that is going to New England by water?

A. Yes; any part, or to New York either, any water port.

Q. Can you give me those prices?

A. In September, 1913?

Q. Yes.

A. The four sizes you mean are——

Q. Broken, egg, and stove, chestnut, and pea.

A. Well, now in September last, the broken coal was—let me give you the egg, stove, chestnut, and pea first. Egg and stove in September was $5.20 at Port Johnson, delivered on boats; chestnut was 25 cents per ton more; and pea coal was $3.45 per gross ton. 709

Q. That is, tons of 2,240 pounds?

A. Yes. Now, the broken coal is a coal that is sold, most of it, on contracts, as is pea coal, too. Broken coal in September was—well, the contract price of broken coal in September was $4.50 to $4.55. The circular price was higher.

Q. What was the circular price?

A. Well, I think the circular price was $4.75. I am not quite sure on that, Mr. Kingsbury, because most of our broken coal is disposed of early in the season on the contract price.

Q. When you say contract price, you mean that you agree with a given customer to deliver a certain amount of coal during a year at a certain fixed price, irrespective of variations from month to month?

A. That is it.

Mr. COUDERT. And different from the circular price?

A. Well, yes, sir.

Q. Will you explain that system of dealing a little more fully?

A. Our largest customers for broken coal here are the gas companies, and necessarily they want a price for the season, and we sell them so many thousand tons per year, delivered in equal monthly quotas, at a contract price. They are manufacturers, and I suppose they want to know what the stuff is to cost them.

Q. And is each contract the result of special negotiations with the 710 customer, or do you have a uniform contract price for all who buy in that way?

A. Well, we have what we call a contract price.

Q. And you get it when you can?

A. Oh, well, I get it, or I do not sell it.

Q. Do you sell a large amount of your coal to Burns Brothers?

A. Well, yes; they are very large customers of ours.

Q. Do you know about how much they take in a year?

A. Well, I could not tell you—you mean at all points, at all their yards?

Q. At all their yards.

A. Well, I can not tell you exactly, Mr. Kingsbury, but I should say 500,000 or 600,000 tons.

Q. Do you sell that to them on contract or at varying prices?

A. On our regular prices.

Q. When you speak of regular price, does that mean the same as when you speak of circular prices? You mentioned circular prices a while ago.

A. Yes, sir.

Q. Do you issue typewritten circulars or written circulars to your agents?

A. No, sir.

Q. That is simply a matter of private communication to them?

711 A. Yes.

Q. Is the coal that is sold to Burns Brothers sold on the "delivered on board vessels" basis?

A. Delivered on board vessels at our regular monthly price at Port Johnston.

Q. You stated that you fixed the prices ordinarily in the spring of each year, did you not?

A. Yes, after consultation.

Q. That is, there are monthly reductions in price during the summer?

A. There is a monthly reduction in the 50 cts.—it is 50 cts. less on April 1st than it was on September 1st, and then that in the next month is 40 cts., and so on down until the following September.

Q. Does the price run the same from year to year?

A. Well, no, sir; that depends. You mean regularly every year from year to year?

Q. Was the price in September, 1913, the same as the price in September, 1912?

A. I think it was.

Q. And the same as in September, 1911?

A. No; I think not. I think some sizes were less in 1911.

Q. Some sizes less in 1911?

A. I think so. I can not remember all these details. That is my impression.

Q. What I am trying to get at is the general course of prices.

712 Coal has risen somewhat in price, has it not, in the last ten years?

A. Oh, yes; brought about by increased wages that came after long, tiresome, and expensive strikes at the mines. We had to make quite a radical increase in wages.

Q. How much has this increase in price amounted to within the past ten years?

A. Well, really, Mr. Kingsbury, I can not tell you that accurately. It has been so long—I could not answer that question intelligently right off the bat.

Q. Do you know the highest price at which egg and stove coal has sold at any time within the last ten years? Your coal and at what points? I will limit my question to New York.

A. Well, I can only say as I did before, ten years ago is a long time, and I do not know. We are getting more money for some sizes than we did ten years ago.

Q. But you do not know how much more, whether it is 50 cts. or 25 cts. a ton?

A. I do not think it is 50 cts.

Q. Can you answer the question for the last five years, Mr. Heilner?

A. Not accurately, Mr. Kingsbury, because—I could have prepared myself. This question of price depends very much upon the market. If I was a free agent to get what some of my competitors, the individuals, get for their coal at times, I could net very much more. Last spring some of these individual miners were getting $1.50 a ton more for coal than Mr. Baer would allow me to ask, and you will pardon me if I say that, while I have not got the big head 713
as to my ability as a salesman, if I could not get as much money for coal as they can, I would resign, but he won't allow it.

Q. When you speak of these independent miners, whom do you mean?

A. I mean all of them; that is, all the miners who sell their own coal.

Q. That is, other than the so-called railroad coal companies?

A. Other than the so-called railroads.

Q. These high prices were obtained by the independents so-called during strike times?

A. No. We had a strike in 1912 but we had none in 1913, and it came about by the natural demands for coal—cold weather, we had a cold winter.

Q. Was there something of a coal famine?

A. I do not think so. We had the strike in 1912 for two months which depleted the stocks and immediately they take advantage of it. It is a sore point with me that I can not take it, too; might just as well get it.

Q. Can you prepare a statement of the prices as fixed by you for your company's coal to be sold at New York tidewater for the last seven years?

A. We can furnish you the prices at which our coal was sold for that time during that period.

Mr. COUDERT. It was sold at the prices you fixed? 714

A. Sold at the prices I fixed.

Q. Was it part of your functions to keep track of the prices that are charged by other coal companies?

A. Well, I do not keep any particular track, but I hear them from people who buy from me, who come to my office and tell me the prices they can buy coal at.

Q. You say your prices are lower at times than those of the so-called independents. Do you know how they compare with the prices, for example, of the Phila. & Reading Coal & Iron Co.'s coal at New York tidewater?

A. No, sir. I know only the matters pertaining to my own company—the Lehigh & Wilkes-Barre Coal Co.

Q. But don't you know what prices coal is commanding in the market generally aside from the independent miners?

A. Well, yes; I know in a general way, just as I told you.

Q. Well, then, aren't you in the way of knowing whether the Reading Company's coal is being sold higher or lower than yours at a given time or at substantially the same price?

A. Well, I have a suspicion that at times some of it is sold lower.

Q. But it is generally sold at the same price?

A. So far as I know.

Q. How about the other so-called railroad's coal, is that sold at substantially the same price as yours, or at a lower price?

715 A. All I can say, the only way I can answer that, Mr. Kingsbury, is to say that I get my information, you might say, second hand from some of our buyers, and that some of them, I am of the opinion—strongly of the opinion—that some of them are not getting as much for coal as we are.

Q. But in general all the different railroad companies' coal sells for about the same price, does it not?

A. Well, as far as I hear, every now and then somebody is selling coal at a different price, but I do not pay any attention to it. That is an unusual condition.

Q. That is an unusual condition, an exceptional condition?

A. Well, that depends, too, on how some of them are pushed—how they want to move their coal.

Mr. COUDERT. Don't you see the price lists of other coal companies?

A. Well, yes; sometimes they mail me one, but I tell you, Mr. Coudert, that does not always mean just what they are getting.

Mr. COUDERT. Don't you receive information from the bureau of anthracite statistics?

A. Well, I get their statement as to tonnage; that is all I get from the bureau of anthracite statistics. I do not know who is at the head of it now.

Mr. KINGSBURY. Mr. Ruley?

716 A. Yes.

Q. What do you get from it?

A. I simply get the tonnage that is carried by the other roads.

Q. Does that not also show the prices as a basis of fixing the miners' wages?

A. I can say for myself that I have nothing to do with the fixing of the wages—I know nothing about it.

Q. Just what do you get from the Anthracite Bureau, Mr. Heilner?

A. As I told you, I get the tonnage on the various roads.

Q. Without any statement of prices whatever?

A. Without any statement of prices or any division of where the coal comes from—whether it comes on the Central from the Lehigh & Wilkes-Barre or any other shipper on that road.

Mr. COUDERT. What use do you make of that information?

A. This anthracite information?

Q. Yes.

A. It is no particular use to me except general information as to what the other roads are doing.

Q. Does it aid you in any way in fixing prices?

A. No, sir.

Q. What elements do you consider in fixing the prices for your coal?

A. Elements? 717

Q. What other factors do you take into consideration in order to reach what you think a proper price to put on your coal?

A. Well, I want to sell my coal—I want to be able to move it promptly as it is mined, and necessarily I like to get a good, fair remunerative price for it.

Q. In other words, what the traffic will bear?

A. Well, no; I would like to, but as I said a while ago, there are many times that I can get more money for my coal than Mr. Baer will allow me to take. We are coal merchants and not speculators.

Q. And he tells you it is too high, and he lowers it?

A. I do not quite get that,

Q. You endeavor to fix a rate, and he tells you that it is too high, and he lowers it?

A. Well, in this instance to which I refer here, I tell him that it hurts my pride to see these people getting $1.50 more for coal than I get, and selling lots of it, too.

Q. And what does he say to that?

A. He does not say much of anything. I know enough to go on as I have been doing.

Q. What I want to get at is: When you come to fix a price for coal, you must take into consideration certain things, and before you submit that price to Mr. Baer, now, what are the things that you consider?

A. Well——

Q. Production, scarcity, freight rates, what? 718

A. Well, I have to consider the condition of the market, the—well, I do not know how to say it better than the condition of the market as

it looks to me, but as I have said two or three times, we do not agree always as to what I think I can get for coal, because I am sure that I could at times get more.

Q. And Mr. Baer does not think so?

A. I do not know what he thinks about it. He does not agree with me that——

Q. Well, he thinks your rate is too high; that is what you mean, isn't it?

A. Well, I do not know that he does. He doesn't allow me to speculate on the public. I might—well, never mind, I won't say any more.

Mr. KINGSBURY. I offer in evidence the statement of New England prices, identified by the witness, and the same is to be spread at length upon the record.

SEPTEMBER 1ST, 1913.

Prices at Boston agency.

On cars, Salem:	
Broken	$6.00
Egg and stove	6.25
Chest	6.50
Pea	4.50
On teams, Salem (except E. H. Knight & Co.):	
Broken	6.10
719 Egg and stove	6.35
Chest	6.60
Pea	4.50
E. H. Knight & Co., contract—	
Broken	5.45
Egg and stove	6.20
Chest	6.45
Pea	4.50
On teams, Charlestown:	
Broken	$6.10
Egg and stove	6.35
Chest	6.60
Pea	4.50
On teams, Lawrence:	
Broken	7.15
Egg and stove	7.40
Chest	7.65
Pea	5.40
On teams, Lowell:	
Broken	6.95
Egg and stove	7.20
Chest	7.45
Pea	5.40

APRIL 1ST, 1913.

Prices at Boston agency.

On cars, Salem:	
Broken	$5.50
Egg and stove	5.75
Chest	6.00
Pea	4.50
On teams, Salem (except E. H. Knight & Co.):	
Broken	5.60
Egg and stove	5.85
Chest	6.10
720 Pea	4.50
E. H. Knight & Co., contract—	
Broken	5.45
Egg and stove	5.70
Chest	5.95
Pea	4.50
On teams, Charlestown:	
Broken	$5.60
Egg and stove	5.85
Chest	6.10
Pea	4.50
On teams, Lawrence:	
Broken	6.35
Egg and stove	6.60
Chest	6.85
Pea	5.40
On teams, Lowell:	
Broken	6.35
Egg and stove	6.60
Chest	6.85
Pea	5.40

(Above statement received in evidence and marked "Plaintiff's Exhibit No. 67," March 2, 1914.)

721 Mr. KINGSBURY: I think that is all, Mr. Heilner, as far as the Government is concerned.

No cross-examination.

Mr. JOHNSON took the witness chair.

By Mr. KINGSBURY:

Q. Will you give your full name?

A. Warren C. Johnson, comptroller Lehigh & Wilkes-Barre Coal Co., Philadelphia.

Q. What is the nature of your functions as comptroller?

A. I have charge of the books and accounts, payments and disbursements, collections, receipts, income, &c.

Q. What have you to do, if anything, with the fixing of prices for the coal?

A. Nothing.

Q. Nothing?

A. Nothing. I bill out the coal from the prices furnished by the sales department.

Q. You, therefore, know in that way what prices have actually been realized for the coal at different points?

722

A. Yes, sir.

Q. Have you prepared any statement showing the prices realized at any particular time?

A. These are the prices covering the year of 1913 at certain points—tidewater.

Q. This is a statement of the prices actually realized in the year 1913 at the various points mentioned in the statement?

A. Yes, sir.

Mr. KINGSBURY. I offer this statement in evidence to be spread on the record:

Lehigh & Wilkes-Barre Coal Company prices for year 1913.

	Broken.	Broken, contracts.	Egg.	Stove.	Chest.	Pea.	Buck No. 1.	Buck No. 2.	Buck No. 3.
A—Jersey City:									
Wilkes-Barre	$5.00	$4.50	$5.25	$5.25	$5.50	$3.50	$2.75	$2.25	$1.75
Plymouth	5.10	4.60	5.35	5.35	5.60	3.50	2.75	2.25	1.75
Honey Brook	5.00	4.50	5.25	5.25	5.50	3.50	2.75	2.25	1.75
B—F. o. b. tidewater:									
Wilkes-Barre	4.95	4.45	5.20	5.20	5.45	3.45	2.70	2.20	1.70
Plymouth	5.05	4.55	5.30	5.30	5.55	3.55	2.70	2.20	1.70
Honey Brook	4.95	4.45	5.20	5.20	5.45	3.45	2.70	2.20	1.70
C & D.—New England, all rail:									
Wilkes-Barre	3.45	2.95	3.70	3.70	3.95	2.10	1.50	1.15	.65
Plymouth	3.55	3.05	3.80	3.80	4.05	2.20	1.50	1.15	.65
Honey Brook	3.45	2.95	3.70	3.70	3.95	2.10	1.50	1.15	.65

A—On cars at destination, Jersey City.
B—On vessels at tidewater, Port Johnston.
C—Reduction of 20c. per ton from these prices for egg, stove, and chest. sizes to certain points via Albany.
D—On cars at mines; freight rates to be added to destinations.

723

From the above prices a reduction is made on broken (except on contracts) egg, stove, and chest. of: 50 cts. per ton April 1st, 40 cts. per ton May 1st, 30 cts. per ton June 1st, 20 cts. per ton July 1st, 10 cts. per ton August 1st.

(Above statement received in evidence and marked "**Plaintiff's Exhibit No. 68,**" March 2, 1914.)

Q. Do you happen to remember how these prices compare with the prices for the past few years?

A. Well, they are about the same, although in one or two sizes they are a little higher.

Q. Than they were in 1912?

A. Two or three years ago on some sizes.

Q. In which sizes has there been a change?

A. Mostly the small sizes, buckwheat.

Q. Has there been any substantial change in the domestic sizes so-called in the last several years?

A. If you go back ten or fifteen years, there has been, on account of the strikes, increase of wages; that was some time back.

Q. Do you remember when, about, the substantial change occurred in domestic sizes?

724 A. My impression is that it was after the last strike. There was an increase in wages in 1912. The wages were increased ten per cent or something of that kind and there was a slight advance.

Q. Prior to that, when was the last substantial increase?

A. I do not think there was anything back of 1902, which was the big strike. Then there was a big advance.

Q. So that the price has been substantially uniform from 1902 to 1912 for your company's coal?

A. With the possible exception of some increase in the steam sizes, buckwheats.

Q. They are the very small sizes?

A. Very small sizes; and the demand for those sizes was somewhat increased in excess of the output or production.

Q. Do you know anything about the prices realized by other coal companies for their coal?

A. Absolutely nothing.

Q. That does not come within your scope?

A. I am not interested except through curiosity as to whether they get as much as we do or not.

Q. And that you do not know?

A. That I do not know.

By Mr. REYNOLDS:

Q. Have you any connection whatever with the Central Railroad Co?

A. Absolutely none.

725 Q. Have you ever had?

A. Never.

By Mr. KINGSBURY. Supplementing the statement made on the record by Mr. Reynolds at the last session, I read in evidence a memorandum in regard to the Central Railroad Company's leases, which were produced at that time, and which has been examined by Mr. Reynolds.

It is understood that this supplements the statement as respects leases containing such covenants made by Mr. Reynolds, but does not question or modify the statement as to the leases which did not contain such covenants.

UNITED STATES VS. READING COMPANY.

Memorandum re C. R. R. leases.

The following leases contain this shipping covenant:

> That all coal shipped to or from said demised premises and handled thereon and thereat shall be shipped over the railroad lines of the party of the first part and their connections.

C. R. R. of N. J. to Arctic Ice & Milk Co., lease dated Feb. 1st, 1912, two coal bins at Bridgeton, rent $50 per year.

C. R. R. of N. J. to C. F. Booblitz, lease dated Feb. 1st, 1912, five coal bins at Bridgeton, rent $125 per year.

C. R. R. of N. J. to C. R. Kandle, one year from Feb. 1st, 1912, five coal bins at Bridgeton, $125.

C. R. R. of N. J. to C. R. Chamless, one year from Feb. 1st, 1912, seven coal bins at Pridgeton, $175.

Lease C. R. R. of N. J. to R. C. Boise Co., five years from April 1st, 1911, property at Newark, $1,000 per annum, contains this covenant: 726

> That the party of the second part will transport over the railroad lines of the party of the first part all coal destined to said premises.

Lease C. R. R. of N. J. to Lehigh Coal & Navigation Co., five years from July 1st, 1911, with five years renewal, coal trestle and siding at Phillipsburg: $400 for 1st year; $500 next four years; $520 last five years, and 10c. per ton for all coal in excess of 5,200 tons per annum; contains this covenant:

> That all coal shipped to or from said demised premises and handled thereat shall be shipped over the railroad lines of the lessor.

Lease C. R. R. of N. J. to Dunellen Coal & Supply Co., one year from April 1st, 1909, land with coal trestle at Dunellen $600 per year and 10c. per ton on all in excess of 6,000 tons per year contains this covenant:

> That it (the party of the first part) will ship to said trestle not less than 6,000 tons of coal in each and every year during the term hereby created and that all coal consigned or shipped to it to be dumped on said trestle shall be transported over the railroad lines of the party of the first part.

C. R. R. to John C. Roche, one year from June 1st, 1909, coal pockets, etc., at Flemington, 10c. per ton with guarantee of $250 per year contains this covenant:

> That he (the party of the second part) will ship to said trestle not less than 2,500 tons of coal in each and every year during the term hereby created and that all coal consigned or shipped to him to be dumped on said trestle shall be transported over the railroad lines of the party of the first part.

727 C. R. R. to David Rockafeller, one year from December 1st, 1895, and thereafter from year to year, eight coal pockets at Lebanon, N. J., 10c. per ton, with guarantee of $100 per year, contains this covenant:

> The party of the second part hereby agrees that all coal consigned to or dumped upon said demised premises shall be shipped over the lines of the party of the first part, except in the event of coal purchased from parties not on the lines of the party of the first part, in which event such coal shall be delivered to the party of the first part at its nearest connecting point.

Substantially similar covenant in C. R. R. of N. J. to Hauch Bros., one year from October 1st, 1894, and thereafter from year to year, eight coal pockets at Jersey City, N. J., 10c. per ton, with guarantee of $300 per year.

C. R. R. of N. J. to George Weidenmayer, license for coal chutes at Newark, contains the following covenant:

> All freight or coal which the party of the second part has to offer for shipment from or which is to be received at said siding and trestle, so far as the party of the second part can control the routing thereof to or from points on or reached via the lines of the party of the first part, shall be shipped over such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similar service, and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

C. R. R. of N. J. to North River Coal & Wharf Company property at Jersey City, twenty years from September 1st, 1905, $6,000 per year, plus a graduated price per ton dependent on amount of tonnage, contains the following covenant:

> And the said lessee, for itself, its successors and assigns, further covenants and agrees as a part of the consideration hereof, that no coke or anthracite or bituminous coal shall be delivered to or shipped from said demised premises during the continuance of the term hereby granted unless the same shall have been transported over the lines operated by the lessor, the privilege of shipping coal or coke at the pier or piers on said demised premises being granted to the lessee only for coal
> 728 and coke so transported, and that it, said lessee, will, to the extent of its power and control, direct the shipments of bituminous coal and coke by way of Haucks Switch, Allentown and Buttonwood, Pennsylvania, and thence over the lines operated by the said lessor, to the end that it, said lessor, may receive the longest possible haul and the greatest possible transportation charge thereon, it being understood and agreed, however, that the rates (exclusive of the further additional sum as the part of the rental computed on a tonnage basis and more fully described in lines beginning at nineteenth line from top of fifth page and continuing through line fifteen from top of page six, both inclusive) charged by said lessor for such haul and transportation over the lines of railroad owned or controlled by it shall not be greater than those charged by it to others for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar

circumstances and conditions. And the said lessee, for itself, its successors and assigns, covenants and agrees that it will cause to be transported over the lines of the lessor to its demised premises not less than five hundred thousand (500,000) tons of bituminous coal or coke in every year between September 1 and August 31, both inclusive, unless prevented from so doing by strikes in the Pennsylvania mining regions or failure of transportation facilities on the roads over which coal shipped to the lessee is transported or other causes beyond the reasonable control of the lessee.

C. R. R. of N. J. to Lehigh Coal & Navigation Company, one year from Feb. 1st, 1912, from year to year thereafter, two coal pockets at Elizabethport, $400 per year and 5c. per ton on all coal in excess of 8,000 tons per annum, contains the following covenant:

(c) That all coal shipped to or from said demised premises and handled thereat, so far as the lessees can control the routing thereof from or to points on or reached via the railroad lines of the lessor, shall be shipped over such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similar service and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

Substantially similar covenant in the following leases: 729

Central R. R. of N. J. to C. M. Peterson & Company, one year from April 1st, 1911, and from year to year thereafter, property at Perth Amboy, $600 per year and 10c. per ton on all coal in excess of 6,000 tons per annum.

Central R. R. of N. J. to Drifted Anthracite Coal Company, one year from May 1st, 1912, and from year to year thereafter, property at Bowmanstown, Pa., $75 per annum.

C. R. R. of N. J. to George M. Friese, one year from April 1st, 1912, with privilege of renewal for one year, property at Woodridge, N. J., $400 per annum and 10c. per ton on all coal in excess of 4,000 tons per annum.

C. R. R. of N. J. to Edward I. Edwards, property in Jersey City, five years from May 15th, 1911, with five years renewal, $1,000 per year and 10c. per ton on all in excess of 10,000 tons per annum.

C. R. R. of N. J. to Somerset Manufacturing Company and Raritan Woolen Mills sidings and trestles at Raritan dated Jan. 15th, 1907, contains the following covenants:

All freight or coal which the Somerset Company and the Raritan Company or either of them have to offer for shipment from or which is to be received at said sidings and trestles so far as they or either of them can control the routing thereof to or from points on or reached via the lines of the railroad company, shall be shipped over such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similar service, and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

This agreement shall continue in force so long as the Somerset Company and the Raritan Company shall continue to receive at or ship from said sidings and trestles an aggregate amount of not less than five thousand (5,000) tons of freight or coal per annum from the date hereof, and when such aggregate annual amount of freight or coal so received at or shipped from said sidings and trestles shall be less than said five thousand (5,000) tons, then the railroad company, at its option, may
730 declare this agreement at an end and may remove said sidings and trestles and materials composing the same from the lands of said Somerset Company and Raritan Company, without being liable in damages for such removal.

This agreement may also be terminated by either of the parties hereto in case of breach of any covenant or agreement by the other or others to be performed, if such breach be not compensated within 10 days after written notice, and it may also be so terminated by the railroad company in the event that the grants, consents, authority, and permission or any of them to maintain and operate said main switch shall lapse or become inoperative or shall not be procured and vested as provided in article "Second" hereof.

Note.—No provision for rent.

C. R. R. of N. J. and Vineland Railroad Company to Robert Pond, dated Feb. 28th, 1903, one year from March 1st, 1903, eleven coal pockets at Vineland, N. J., $1.00 per year, contains the following covenant:

> The party of the second part hereby covenants for himself, his heirs, executors, administrators, and assigns, that at least three thousand (3,000) tons per annum of all the coal consigned to, dumped upon, or sold from the demised premises shall be purchased by him exclusively from mines upon the railroad lines of the parties of the first part and the Philadelphia and Reading Railway. A breach of this covenant shall, at the option of the parties of the first part, be sufficient cause for termination of this lease forthwith, notwithstanding rent may have been paid in advance.

C. R. R. of N. J. to Kelchner & Son, five years from July 1st, 1907, with renewal of five years, twelve coal pockets at Walnutport, Pa., 10c. per ton, with guarantee of $200 per year, contains the following covenant:

> That they will ship to said trestle not less than two thousand (2,000) tons of coal in each and every year during the terms hereby created, and that all coal consigned or shipped
731 to them to be dumped on said trestle shall be transported over the railroad lines of the party of the first part.

(Above statement received in evidence and marked "**Plaintiff's Exhibit No. 69,**" March 2, 1914.)

I read in evidence from the report of the Reading Company for 1913, already in evidence, the following:

READING COMPANY.

Directors.—George F. Baer, Henry A. DuPont, Henry P. McKean, Samuel Dickson, Edward T. Stotesbury, Henry C. Frick, George F. Baker, Peter A. B. Widener, Daniel Willard.

President, George F. Baer; vice president, George Ziegler; secretary, Jay V. Hare; treasurer, Harry E. Paisley.

PHILADELPHIA & READING RAILWAY COMPANY.

Directors.—Henry A. DuPont, Edward T. Stotesbury, Henry C. Frick, George F. Baker, Peter A. B. Widener, Daniel Willard.

President, George F. Baer; vice president, Theodore Voorhees; vice president and freight traffic manager, John F. Auch; vice president and general manager, Agnew T. Dice; secretary, George Ziegler; treasurer, Harry B. Paisley.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Directors. Henry P. McKean, Edward T. Stotesbury, Henry C. Frick, George F. Baker, Peter A. B. Widener, Daniel Willard.

President, George F. Baer; vice president and general manager, W. J. Richards; secretary, W. G. Brown; treasurer, Harry E. Paisley. (p. 3.) 732

Net result of the business of the three companies for the past fiscal year and comparison with previous year:

	1912-13		1911-12	
Reading Company.				
Receipts	$9,624,836.08		$8,085,062.76	
Expenses	104,539.91		110,886.55	
Gross corporate income	9,520,006.17		7,974,176.21	
Deductions from income	5,258,331.03		5,572,375.48	
Net corporate income		$4,261,675.14		$2,401,800.73
Philadelphia and Reading Railway Company.				
Receipts	52,214,894.05		45,805,714.66	
Expenses	30,547,340.66		28,516,878.09	
	21,667,553.39		17,398,836.57	
Taxes	1,300,478.43		949,775.84	
Gross corporate income	20,367,074.96		16,379,060.73	
Additions and betterments	2,391,562.36		2,629,739.53	
	17,975,512.60		13,720,321.20	
Deductions from income	8,276,905.29		8,220,482.71	
Net corporate income		9,698,607.31		5,508,838.49
The Philadelphia and Reading Coal and Iron Company.				
Receipts	40,983,053.03		35,733,652.85	
Expenses	37,196,144.69		34,612,537.91	
Gross corporate income	3,786,918.34		1,121,114.94	
Deductions from income	2,647,325.93		949,539.29	
Net corporate income		1,139,592.41		171,575.65
Net corporate income of three companies		15,099,874.86		8,082,214.87

733 THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

The total production of anthracite coal from the lands owned, leased, and controlled by the Philadelphia and Reading Coal and Iron Company for the year ended June 30, 1913, was 12,807,996.06 tons, as compared with 10,098,831.02 tons mined during the previous year, an increase of 2,709,165.04 tons, or 26.83 per cent.

During the year the company mined 11,089,742.16 tons, an increase of 2,418,729.16 tons or 27.89 per cent; purchased 524,574.05 tons, a decrease of 116,697.15 tons, or 18.20 per cent, and sold 10,748,603.00 tons, an increase of 553,912.18 tons, or 5.43 per cent as compared with the previous year. (P. 16.)

The increase of receipts from the sale of anthracite over last year was $5,057,056.84; the increase in receipts from sale of bituminous and from other sources was $192,353.34, making an increase in gross receipts of $5,249,410.18 as compared with previous year. (P. 17.)

READING COMPANY.

Statement of miscellaneous stocks owned by Reading Company.

Stocks of—	Par, June 30, 1913.	
	Pledged under general mortgage.	Not held by trustee of general mortgage.
* * * * *	*	*
Central Railroad of New Jersey, common		$14,504,000.00
* * * * *	*	*
Philadelphia and Reading Terminal Railroad Company, common	$8,497,500.00	2,500.00
* * * * *	*	*
Port Reading Railroad Company, common	1,555,000.00	445,000.00
734 * * * * *	*	*
Schuylkill Navigation Co., preferred		3,233,450.00
Schuylkill Navigation Co., common		648,500.00
* * * * *	*	*
Temple Iron Company, common		281,600.00

(P. 29.)

From the report of the Central Railroad Company of New Jersey for 1913, already in evidence, the list of directors and officers:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Directors.—George F. Baer, George F. Baker, Harris C. Fahnestock, Eben B. Thomas, Charles Steele, Robert W. de Forest, Henry Graves, jr., E. T. Stotesbury, Howard W. Maxwell.

General officers.—President, George F. Baer; chairman executive committee, George F. Baker; vice president and general counsel, Robert W. de Forest; vice president and general manager, William G. Besler; vice president and freight-traffic manager, Tilghman B. Koons; general attorney, Jackson E. Reynolds; assistant counsel, George Holmes; secretary and treasurer, George O. Waterman; comptroller, John A. Taylor; assistant freight traffic manager, Eleazer M. Snyder; general freight agent, Arthur Hamilton; general

passenger agent, William C. Hope; general superintendent, C. William Huntington; chief engineer, Joseph O. Osgood; superintendent motive power, Charles E. Chambers; manager marine department, Henry L. Joyce.

Securities owned by the Central Railroad of New Jersey. 735

	Par value.	Pledged under general mortgage.	Unpledged.
Stocks.			
Alliance Coal Mining Co.	$150,000.00		$150,000.00
Lehigh & Wilkes-Barre Coal Co.	8,491,150.00	$7,850,000.00	641,150.00
Lehigh & Hudson River Ry. Co.	163,300.00		163,300.00
Bonds.			
Lehigh & Wilkes-Barre Coal Co., 4 per cent.	6,669,000.00		6,669,000.00

From the report of the Lehigh & Wilkes-Barre Coal Company for 1913, the list of directors and officers:

LEHIGH & WILKES-BARRE COAL CO.

Directors.—George F. Baer, Reading, Pa.; George F. Baker, New York, N. Y.; Samuel Dickson, Philadelphia, Pa.; Edward T. Stotesbury, Philadelphia, Pa.; Andrew H. McClintock, Wilkes-Barre, Pa.; Charlemagne Tower, Philadelphia, Pa.; Thomas A. Wright, Wilkes-Barre, Pa.

Officers.—George F. Baer, president; Charles F. Huber, vice president and general manager; Percival B. Heilner, vice president and general agent; George O. Waterman, secretary and treasurer; Warren C. Johnson, comptroller; John D. Landis, purchasing agent. (P. 3.) 736

5,188,221.00 tons were mined and shipped during the current year, an increase of 1,202,795.19 tons, and 541,559.00 tons were purchased, a decrease of 144,969.04 tons, as compared with the previous year.

The tonnage sold was 5,678,373.05, an increase of 497,914.19 tons over previous year. The tonnage of prepared sizes sold, including lump, equaled 66.73 per cent and of pea and smaller 33.27 per cent. (P. 5.)

(The report of the Lehigh & Wilkes-Barre Coal Co. for 1913, received in evidence and marked **"Plaintiff's Exhibit No. 70,"** March 2, 1914.)

I also offer in evidence a statement of the acreage of anthracite coal lands leased by the Lehigh & Wilkes-Barre Coal Company to independent operators, furnished by Mr. Reynolds:

LEHIGH AND WILKES-BARRE COAL COMPANY.

Statement showing total acreage of anthracite coal lands leased to independent operators.

	Acres.
Containing all veins	885
Mammoth vein	30.9
Wharton and Buck Mountain veins	96.46
Ross and Red Ash veins	42
Stanton vein	9.94
Five-foot vein	17.13

Where veins are shown only tonnage contained in veins mentioned is leased.

(Above statement of acreage received in evidence and marked **"Plaintiff's Exhibit No. 71,"** March 2, 1914.)

I also offer in evidence a copy of lease, dated September 1st, 1896, by the Lehigh & Wilkes-Barre Coal Company to the Red Ash Coal
737 Company:

Indenture of mine lease, made the first day of September, in the year of our Lord one thousand eight hundred and ninety-six, between the Lehigh and Wilkes-Barre Coal Company, a corporation incorporated under the laws of the State of Pennsylvania, hereinafter called the Lessor, of the one part, and the Red Ash Coal Company, a corporation, incorporated under the laws of the State of Pennsylvania, hereinafter called the Lessee, of the other part:

Witnesseth, That the said Lessor for and in consideration of the covenants and agreements hereinafter contained, to be kept and performed by and on the part of the said Lessee, hath demised, leased, and to mine let, and by these presents doth lease, demise, and to mine let unto the said Lessee, its successors and assigns, all the merchantable and minable coal in the veins or seams of coal known as the Ross and Red Ash veins in, under, and upon all that certain tract of land situate in the township of Wilkes-Barre, Luzerne County, Pennsylvania, bounded and described as follows:

* * * * * * *

Eighth. All the coal mined from said premises and sent to market shall be transported over the lines of such railroads as are now or shall be owned or controlled or designated by the said Lessor, or by the Central Railroad Company of New Jersey, its successors or assigns, provided the said companies or either of them furnish cars
738 for the transportation of the said coal in the same proportion as furnished their own mines, and so long as such cars are so furnished there shall not be any coal shipped from the said demised premises or any part thereof by any other railroad, or lines than as aforesaid owned or controlled or designated by the said Lessor, or by the Central Railroad Company of New Jersey, its successors or assigns; the rate of freight on the coal mined from the hereby demised premises and shipped to market over the lines of the Central Railroad Company of New Jersey, or such roads as may be designated by the said Lessor, shall not be any greater rate of freight than charge by the said Central Railroad Company of New Jersey, or such roads as may be designated by the said Lessor, for coal shipped over the aforesaid

lines, from any adjacent mines to the said point of delivery. Any breach of this covenant on the part of the said Lessee shall, at the option of the said Lessor on thirty days' notice of intention to forfeit, work an absolute forfeiture of this lease, and the estate hereby demised shall revert to said Lessor, and the said Lessor may take possession of the premises hereby demised, and the improvements erected thereon, by legal process or summarily and without legal process, at its option. And any non-user of this right of forfeiture, in case of breach of this covenant, shall not waive the right to enforce a forfeiture when and so often as a new breach shall arise.

* * * * * * *

In witness whereof the said parties to these presents have caused their respective corporate seals to be hereto affixed, duly attested by 739
the signatures of their respective presidents and secretaries
Dated the day and year first above written. Signed in duplicate.

LEHIGH AND WILKES-BARRE COAL COMPANY,
By J. R. MAXWELL, *President.*

In presence of—
M. B. WILLIAMS,
S. J. LONKIN.
Witness to J. R. MAXWELL:
J. W. MEDLER.
Attest:
HENRY GRAVES, Jr., *Secretary.*

THE RED ASH COAL COMPANY,
By G. H. PARRISH, *President.*

Attest:
[L. S.] W. LEAVENWORTH, *Secretary.*

(Lease above referred to and from which extracts are taken received in evidence and marked **"Plaintiff's Exhibit No. 72,"** March 2, 1914.)

Attached to the above lease is a statement furnished by Mr. Reynolds as to certain clauses in other leases by the Lehigh & Wilkes-Barre Coal Company to other lessees, as follows:

(Extract from lease to C. M. Dodson & Co., July 1, 1886.) 740

F. That all coal shipped from demised premises shall be transported over the lines of such roads owned or controlled or as designated by the Lehigh and Wilkes-Barre Coal Company, provided the said company furnishes cars for the transportation of the same, at rates not exceeding those charged by other transportation companies.

(Extract from lease of C. M. Dodson & Co., Dec. 17th, 1891.)

Eighth. All the coal mined from the said demised premises and sent to market shall be transported over the lines of such railroads as are or shall be owned or controlled or designated by the said Lessor, or by the Central Railroad Company of New Jersey, its successors or assigns, provided the said companies or either of them furnish ample and sufficient cars for the transportation of the said coal; and so long as the said cars are furnished there shall not be any coal shipped from the said demised premises or any part thereof by any other railroad, or lines, than as aforesaid owned or controlled or designated by the said Lessor, or by the Central Railroad Company

of New Jersey, its successors or assigns: the rate of freight on the coal mined from the hereby demised premises and shipped to market over the lines of the Central Railroad Company of New Jersey or such roads as may be designated by the said Lessor, shall not be any greater rate of freight than charged by the said Central Railroad Company of New Jersey or such roads as may be designated by the said Lessor, for coal shipped over the aforesaid lines, from any adjacent mines, or mines which now receive the same rate of freight, to the same point of delivery, or more than the average rates made by the Lehigh Valley R. R. Co., from time to time from the same districts. The said Lessees expressly agree that they will mine and remove from other lands which they now, or may hereafter own, lease or control in the vicinity of the premises hereby demised, at least one-half as much coal as they mine and remove from the premises hereby demised and from the premises demised in the lease made between the parties hereto, dated first July, A. D. 1886, and that of the coal so mined and removed from said other lands in the vicinity of the premises demised by this lease and by said lease of first July, A. D. 1886, they will, each month during the continuance of this lease or the said lease of first July A. D. 1886, ship or cause to be
741 shipped, to market, over the lines of railroad above designated, at least one-half ton of coal, in addition to each ton of coal mined and removed from the premises demised by this lease and by said lease of first July A. D. 1886 and shipped as above provided; provided that the number of tons of coal so shipped by the said Lessees in any month from said other lands in the vicinity of the premises demised by this lease and by said lease of first July A. D. 1886, in excess of one-half ton to each ton of coal mined, removed and shipped from the premises demised by this lease and by said lease of first July A. D. 1886, shall apply on the deficiency in the number of tons of coal so shipped from said other lands in the vicinity of the premises demised by this lease and by said lease of first July, A. D. 1886, in any future month of same year, or any subsequent year; and provided that the said Lessor, or the Central Railroad Company of New Jersey, their successors or assigns, shall furnish cars for the transportation of said coal. The rates of freight on the coal mined and removed from said other lands in the vicinity of the aforesaid premises demised by the said Lessor to the said Lessees and shipped to market over the lines of railroad as aforesaid shall not be any greater rate of freight than as provided for coal mined and shipped to market from the premises hereby demised.

(Extract from lease to Melville Coal Co., January 1, 1885.)

Seventh. All the coal mined from the said demised premises and sent to market shall be transported over the lines of such railroads as are or shall be owned or controlled or designated by the Lessor, or by the Central Railroad Company of New Jersey, its successors or assigns, provided the said companies or either of them furnish cars for the transportation of the said coal in the same proportion as cars are furnished to the Lessors' own mines, and so long as such cars are so furnished there shall not be any coal shipped from the said premises or any part thereof by any other railroad or lines than as aforesaid owned or controlled or designated by the Lessor or by the Central Railroad Company of New Jersey, its successors or assigns;

the rate of freight on the coal mined from the hereby demised premises and shipped to market over the lines of the Central Railroad Company of New Jersey, or such roads as may be designated by the Lessor, shall not be any greater rate of freight than the rate charged by the Central Railroad Company of New Jersey, or such roads as may be designated by the Lessor, for coal shipped over the aforesaid lines from any adjacent mines to the same point of delivery.

Any breach of this covenant on the part of the Lessee shall, at the option of the Lessor, on sixty days notice of intention to forfeit, work an absolute forfeiture of this lease and the estate hereby demised shall revert to the Lessor, and the Lessor may take possession 742
of the premises hereby demised and the improvements erected thereon, by legal process, or summarily and without legal process, at its option. And any non-user of this right of forfeiture in case of breach of this covenant, shall not waive the right to enforce a forfeiture when and so often as a new breach shall arise.

(Lease to Red Ash Coal Company, 27 July, 1881.)

Does not contain any covenant binding output to C. R. R. Co. of N. J.

(Lease to Red Ash Coal Company, 1 April, 1891, and its renewals.)

Contains covenant binding output to C. R. R. Co. of N. J.

(Lease to Wilkes-Barre Anthracite Coal Company, 1 March, 1911.)

Does not contain any covenant binding output to C. R. R. Co. of N. J.

(Lease to J. M. Norris, 24 June, 1911.)

Does not contain any covenant binding output to C. R. R. Co. of N. J.

(Lease above referred to and from which extracts are taken received in evidence and marked "Plaintiff's Exhibit No. 72," March 2, 1914.)

I also offer in evidence a statement furnished by Mr. Reynolds 743
showing the tonnage of anthracite coal mined by tenants from lands leased from the Lehigh & Wilkes-Barre Coal Company:

Statement showing tonnage of anthracite coal mined by tenants from lands leased of Lehigh and Wilkes-Barre Coal Company during 5 years ending December 31st, 1913.

Tenants.	1909	1910	1911	1912	1913	5 years.
C. M. Dodson & Co.	11,296.10	20,457.02	21,361.13	19,209.18	39,738.10	112,063.13
Red Ash Coal Co.	91,449.18	102,222.00	110,747.06	98,480.01	78,453.13	481,352.18
West End Coal Co [a]	329,574.05	335,895.14	307,392.01	227,430.00	[b]235,293.18	1,435,585.18
Melville Coal Co.	230,829.13	256,517.01	322,725.02	267,120.13	[c]348,960.13	1,426,153.02
Wilkes-Barre Anthracite Coal Co. J. M. Norris. (No coal mined)			8,819.18	3,046.03	2,678.12	14,544.13
	663,150.06	715,091.17	771,046.00	615,286.15	705,125.06	3,469,700.04

[a] Since the lease was made to the West End Coal Co. most of its output was shipped via P. R. R.
[b] All this tonnage was shipped via the Pennsylvania Railroad.
[c] Of this tonnage 129,000 tons was shipped via the Penn. Railroad.

(The above statement received in evidence and marked "Plaintiff's Exhibit No. 73," March 2, 1914.)

744 I also offer in evidence a statement furnished by Mr. Reynolds showing anthracite coal tonnage shipped to points on and over the Central Railroad:

Statement showing anthracite coal tonnage shipped to points on and over Central R. R. of N. J. system, furnished by Philada. & Reading R. R., Lehigh & Wilkes-Barre Coal Co., the Lehigh Coal & Navigation Co., and all other shippers, for five years ending June 30th, 1913.

	Tons 2,240 lbs.
Year ending June 30th, 1909:	
Received from—	
P. & R. Ry. at Allentown & Bound Brook Jct	351,633.18
Lehigh & Wilkes-Barre Coal Co	4,805,097.15
Lehigh Coal & Navigation Co	2,327,528.16
All other shippers	1,190,196.17
Total	8,674,457.06
Year ending June 30th, 1910:	
Received from—	
P. & R. Ry. at Allentown & Bound Brook Jct	399,305.09
Lehigh & Wilkes-Barre Coal Co	4,697,141.19
Lehigh Coal & Navigation Co	2,386,949.01
All other shippers	1,280,368.03
Total	8,763,764.12
Year ending June 30, 1911:	
Received from—	
P. & R. Ry. at Allentown & Bound Brook Jct	473,615.07
Lehigh & Wilkes-Barre Coal Co	4,837,071.12
Lehigh Coal & Navigation Co	2,842,514.12
All other shippers	1,397,685.06
Total	9,550,886.17
Year ending June 30th, 1912:	
Received from—	
P. & R. Ry. at Allentown & Bound Brook Jct	507,577.06
Lehigh & Wilkes-Barre Coal Co	4,494,101.16
Lehigh Coal & Navigation Co	2,589,753.06
All other shippers	1,082,069.07
Total	8,673,501.15
Year ending June 30th, 1913:	
Received from—	
P. & R. Ry at Allentown & Bound Brook Jct	682,204.07
Lehigh & Wilkes-Barre Coal Co	5,524,678.05
Lehigh Coal & Navigation Co	2,649,391.19
All other shippers	1,399,162.15
Total	10,255,437.06

(Statement just referred to and copied in the record received in evidence and marked **"Plaintiff's Exhibit No. 74,"** March 2, 1914.)

745 Mr. KINGSBURY. On the request of counsel for the Government Mr. Reynolds makes the following statement:

Mr. REYNOLDS. The secretary of the Central Railroad Company of New Jersey reports to me that there is a total of 1,633 shares of the stock of the Lehigh & Hudson River Railroad Company which is undoubtedly held in the interest of the Central Railroad Company of N J. That stock, however, stands in the following names: 1,593

shares in the name of George F. Baer and 10 shares each in the names of George F. Baker, H. C. Fahnestock, E. T. Stotesbury, and Robert W. de Forest; and Mr. John Sayer, the secretary of the Lehigh & Hudson River Railroad Company advises me, in strict answer to my inquiry, that none of the capital stock of the Lehigh & Hudson River Railroad Company has been issued to or stands in the name of the Central Railroad Company of New Jersey, but this is responsive to what you are after and I, therefore, give this stock:

Shares of the capital stock of the Lehigh & Hudson River Railroad Company to the number of 1,593 have been issued in the name of George F. Baer. That at the last annual meeting of the stockholders 746
of the said the Lehigh and Hudson River Railway Company, held on December 2nd, 1913, or upon an adjourned day of meeting, the said shares of stock so standing in the name of the said George F. Baer were voted under and upon a proxy of which the following is a [illegible]

Know all men by these presents: That I, the undersigned, stockholder in the Lehigh and Hudson River Railway Company, hereby constitute and appoint Lewis A. Riley, Morris Rutherfurd, John Sayer, or either of them, my true and lawful attorney and agent, for me and in my name, place, and stead, to vote as my proxy at the annual meeting of the stockholders of the said company to be held on December 2nd, 1913, or at any adjournment thereof, for the election of directors and for the transaction of any business which may legally come before the said meeting, and for me and in my name, to act as fully as I could do if personally present; and I hereby revoke any other proxy heretofore given by me.

Witness my hand and seal this 22nd day of November, 1913.

(Signed) GEORGE F. BAER. [L. S.]

In presence of—

H. A. WALLACE.

And I do further certify that with the exception of the votes cast by Frederick D. Underwood, E. B. Thomas, S. D. Warriner, Lewis A. Riley, William H. Truesdale, and C. D. Dixon, no other votes were cast at said meeting by any stockholder of said company except by and 747
upon stock issued to and standing in the names of corporations.

JOHN SAYER, *Secretary.*

(Received in evidence as **Plaintiff's Exhibit No. 75**, March 2, 1914.)

Now as to the Alliance Coal Mining Co. there are 6,000 shares in the name of the Central Railroad Company of New Jersey. For the last annual meeting, March 11, 1913, a proxy was executed appointing S. D. Warriner, R. H. Wilbur, S. S. Sneyd as proxy, or either of them. For the next annual meeting which is just about to occur March 10, this month, a proxy has been executed, appointing S. D. Warriner, R. H. Wilbur, or H. H. Pease as proxy, or either of the n. I am unable to give you a copy of that proxy because none was retained and you will have to get that from the Alliance Coal Company. Mr. H. F. Baker is or was the secretary of the above company. I suppose it is the usual form of proxy.

Mr. KINGSBURY. I do not think there is any point about getting it.

Mr. REYNOLDS. On your request as to the Lehigh & Wilkes-Barre Coal Co. there are 166,628 shares of that company in the name of the Central Railroad Company of New Jersey. There are 2,610 shares in the name of George F. Baer, 555 shares in the name of Mr. George F. Baker, 5 shares in the name of Samuel Dickson, 15 shares in the name of E. T. Stotesbury, 5 shares in the name of A. H. McClintock, and 5 shares in the name of Thomas A. Wright, being a total
748 of 169,823 shares.

At the last annual meeting of stockholders September 18, 1913, the shares standing in the name of the Central Railroad Company of New Jersey, to wit, 166,628, were voted by George F. Baer as proxy for the Central Railroad Company of New Jersey; 555 shares were voted by George F. Baer as proxy for George F. Baker; 105 shares were voted by Samuel Dickson in person; 2,610 shares were voted by George F. Baer in person; 5 shares were voted by Andrew H. McClintock in person; and I hand Mr. Kingsbury herewith copy of the proxies on which those proxy votes were cast.

Mr. COUDERT. It is just the ordinary form of proxy.

Adjourned, pursuant to agreement, to March 5, 1914.

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749 Met pursuant to adjournment at No. 2 Rector Street, New York City, Thursday, March 5, 1914, at 11 o'clock a. m.

Present: The examiner, Messrs. Coudert, Kingsbury, and Gordon, special assistants to the Attorney General, for the Government; Messrs. Heebner, Reynolds, Turner, Drinker, and Beattie, for defendants.

It is stipulated that, subject to any objection which any of the then absent parties may desire to interpose on the record, pursuant to the reservation to that effect, the testimony taken in the absence of the examiner on March 2, 1914, shall be deemed to have the same force and effect as if the witnesses had been sworn by and testified before the examiner; and that the exhibits then spread upon the record shall be deemed duly in evidence.

ROBERT J. MONTGOMERY, having been duly sworn, was examined and testified as follows:

750 By Mr. COUDERT:

Q. Please state your address.

A. My house address is 106 West Upsal Street, Germantown, Philadelphia; business address, Reading Terminal, Philadelphia.

Q. And your occupation?

A. General coal agent.

Q. For what company?

A. Philadelphia & Reading Coal and Iron Company.

Q. Your office is in the same building with the other two Reading companies?

A. Reading Terminal, Philadelphia.

Q. Is your office physically connected in any way with the office of the other two companies?

A. To which other two companies have you reference?

Q. The Reading Company and the Philadelphia & Reading Railway Company.

A. We occupy a room on the fourth floor of the Reading Terminal Building. We are no more in conjunction with the other companies there than some of the other tenants of the building.

Q. You are merely under the same roof?

A. Merely under the same roof.

Q. Do you hold any other office in the Philadelphia & Reading Coal and Iron Company?

A. No.

Q. Does it fall within your official functions to get out price lists 751
or circulars of your coal?

A. It does.

Q. How often do you do that?

A. We issue a circular in the spring, on April 1st—we have been in the habit of doing it— and then a circular monthly from then until September, the September circular holding good until the following April.

Q. Those various circulars, so issued by you throughout the year, contain schedules of prices at which you sell for the time mentioned in the circular?

A. Yes, sir.

Q. On what considerations do you base your prices?

A. Our prices are determined after a conference with the president.

Q. Will you explain, briefly, just exactly what is the mechanism of getting up one of those circulars?

A. The only mechanism about it is that I confer with the president.

Q. You bring him a proposed circular?

A. Bring him a proposed circular.

Q. You make the prices in the first instance?

A. No; I do not make the prices until I confer with the president.

Q. By the president, you mean Mr. Baer?

A. Mr. Baer.

Q. Then does he suggest to you changes in the circular?

A. If he thinks the figures as submitted are not right, yes. 752

Q. The figures are submitted by you?

A. The figures are submitted—by that I mean I take in the old circular; for the circular on the first of April I would take in last year's

circular and ask him if he considered that satisfactory for the coming year.

Q. And if not, you ask him whether he has any changes to make?

A. Yes.

Q. And he frequently does have such changes?

A. No, I can not say that he does.

Q. He sometimes does?

A. Sometimes.

Q. Then you make those changes?

A. By his direction.

Q. Under his directions?

A. By his direction.

Q. There are no other consultations, outside of the consultation between you and the president?

A. None, whatever.

Q. Do you, in making up tentative circulars, examine into the prices of coal sold by other companies or persons?

A. It has no bearing on the subject whatever.

Q. You do not take that into consideration at all?

A. No, sir.

Q. As a matter of fact, the prices are practically uniform, are they not?

A. As far as I understand, I believe they are.

753 Q. There has been some talk of independents selling at somewhat higher prices; do you know anything about that?

A. Independents never miss an opportunity of increasing the price of coal.

Q. Do you follow them in that?

A. We do not.

Q. Why do you not follow them?

A. Mr. Baer does not think it is good business policy.

Q And Mr. Baer has forbidden you to do that?

A. Yes.

Q. What you say as to the raising of prices at every opportunity applies to the independents, and not to the railroad companies?

A. Not to the Philadelphia & Reading Coal and Iron Company.

Q. Or to the other coal companies, as far as you know?

A. I presume not, although I know nothing about it.

Q. What you say as to the raising of prices refers to the independents?

A. Refers to the independent operators.

Q. You have no criticism of that kind to make in regard to the other companies, the so-called railroad companies?

A. No, sir.

Q. Your coal is sold at those circular prices; you do not make any specific reductions to specific persons, do you?

A. No; the circular price obtains.

Q. Can you explain something about the so-called sliding scale and the reduction during the spring and summer?

A. The sliding scale, or the reduction in the spring, was made with 754
the idea of encouraging large customers to take on coal at that time. It is a physical impossibility to mine enough coal during the winter months to supply the market. Now, in order to lessen the burden on the operating company, the Philadelphia & Reading Coal and Iron Company, by mining coal in the spring months and piling it up, the idea was conceived that perhaps it would be well to reduce the circular, so as to induce the coal dealer to take on coal in the spring of the year, and he carry the burden instead of us. That is all there is to it

Q. That explains the changes in prices during the year?

A. Yes, sir.

Q. That reduction is how much, in figures?

A. Fifty cents a ton, and then it goes up ten cents a month. In other words, the April circular would be fifty cents less than the September circular, or the winter schedule.

Q. And that is the uniform reduction?

A. That is the uniform reduction of the Coal and Iron Company.

Q. And that policy has been carried out for a number of years?

A. Has been carried out for a number of years.

Q. Did the president ever explain to you why he thought it bad policy to raise the prices when the independents did?

A. No. It is not a good business policy; we thought that we were getting fair profit and it was not good business policy to take advan- 755
tage of the market.

Q. You thought it might arouse criticism?

A. No, I do not think criticism entered into it. We are in business to stay, not for a week, or a month, or a year, and we like to hold our customers, and the only way we can do that is by treating them fair.

Q. And so he dictated a policy which he thought was the right one, according to his own personal views in that respect?

A. He did.

Q. And it was entirely his policy?

A. Entirely his policy.

Q. He controlled the matter?

A. He controlled the matter.

Q. There has been some talk of contract coal. Do you sell any contract coal at prices different from the circular?

A. We do, on the steam sizes only.

Q. You might explain about that.

A. In the steam sizes are included broken, pea, buckwheat, and rice. The last three are used largely by manufacturers and come in competition with bituminous coal. Bituminous coal is contracted for at a fixed price; so that, in order to secure the business, we have to fix the price so that the manufacturer would know what his fuel is going to cost him throughout the year. Broken coal is used largely by the gas-producing companies, and they, like the other manufacturers, want to know what their product is going to cost them throughout the year. All the other sizes are changeable, on the sliding scale.

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Q. In fixing your circular prices, or your contract prices, I understand that you are not influenced in any way by the changes in prices made by the independents?

A. None whatever.

Q. That does not affect your price in any respect?

A. No, sir.

By Mr. KINGSBURY:

Q. Have you a standard contract price, as distinguished from your circular price?

A. Yes.

Q. That is not a matter of individual negotiation with each purchaser?

A. No. We have a price, just as I explained to you a moment ago, where we have to compete with bituminous coal. We make that a contract price, and any contractor, any large user, is entitled to that price and we give it to him.

Q. How much below your circular price is your contract price?

A. It ranges from fifteen cents to twenty-five.

Q. Per ton?

A. Per ton.

Q. Do you know whether the other so-called railroad coal companies also sell coal on contract prices?

A. I do not, positively, but I think they do.

757

Q. Do you know how your contract prices compare with theirs?

A. I do not.

Q. You never made any inquiry into that?

A. Never made any inquiry.

Q. So you do not fix your contract prices with any reference to coal sold in the same manner by the other railroad coal companies?

A. No, sir; by the bituminous companies.

Q. You have competition from bituminous coal?

A. Oh, absolutely; in steam sizes.

Q. But not from the other anthracite dealers?

A. What do you mean by that?

Q. You say you have competition from the bituminous coal. Then I say, but you have no competition from other anthracite dealers?

A. Excuse me; but we have very keen competition with everyone producing anthracite coal.

Q. But I thought you said that you did not take their prices into consideration?

A. We do not; we make our own prices.

Q. How much range has there been in the price of coal in the last five years; how much variation, aside from the fifty-cent sliding scale arrangement?

A. I can not answer that offhand.

Q. As nearly as you recollect?

A. Probably 25 cents in some sizes. Others have not been changed 758
at all.

Q. Has it been an increase or decrease?

A. It has been an increase, brought about by the increase in wages to the miners in the last two or three years.

Q. How long have you been in this business?

A. Thirty-odd years.

Q. Can you extend your answer, then, a little farther back, as to the range of prices of coal; just roughly?

A. I think, speaking from memory, there has been no change made from 1902 up to the time of the last strike, which was in 1912.

Q. Was there an increase about 1902?

A. Oh, yes; in 1902, as you probably recall, we had the big strike.

Q. There was an increase then, which has remained?

A. There was an increase then, due to the increase in miners' wages, and that price obtained until 1912. Then there was another increase in the miners' wages.

Q. How much of an increase was there in 1902? I do not mean a temporary increase during the famine, but a permanent increase.

A. Twenty-five cents, I think, but I am only speaking from memory.

By Mr. COUDERT:

Q. In fixing your contract prices for the kinds of coal that you mentioned as covered by contract prices, you take into consideration the bituminous prices for that purpose, but you do not take 759
into consideration the anthracite prices for the same purpose? You only consider the bituminous competition?

A. Only consider the bituminous.

Q. What do you do to obtain orders, in the way of advertisement, soliciting, etc.?

A. We have sales agencies in Philadelphia, Baltimore, Washington, Rochester, Buffalo, Milwaukee, Chicago, and Minneapolis.

Q. What do they do? Send out circulars to their customers?

A. They have traveling salesmen and solicit themselves by letters, and then we have advertisements in all the coal-trade journals, and we solicit business the same as any other mercantile house would.

Q. Do you sell your coal all over the country?

A. Practically all over the country, from Winnipeg to the far South, Galveston.

Q. What is the best market for your coal?

A. That is pretty hard to answer.

Q. Do you sell much in the western market?

A. Considerable; I should say 12 to 14 per cent of our production.

Q. Your principal market is the tidewater market?

A. The principal market is the tidewater and in the State of Pennsylvania.

Q. In the State itself?

760 A. Yes, ir.

By Mr. KINGSBURY:

Q. By tidewater, do you mean New York tidewater?

A. Philadelphia and New York tidewater points.

Cross-examination by Mr. REYNOLDS:

Q. In your reference to the periodical and regular reduction of fifty cents per ton between the prices in September and April, did you mean your answer to refer to anything more than the so-called prepared sizes of coal?

A. No; prepared sizes only.

Q. It does not refer to any sizes of coal below pea?

A. No.

Q. About how much of an investment have you in your properties in these various agencies?

A. We have, I should say upwards of a couple of a million dollars, just in the equipment in those various agencies.

Q. About how large a selling staff have you, covering all those agencies?

A. Twenty-five to fifty men.

Q. That fifty-cent reduction does not apply to pea coal, does it?

A. No.

Counsel for the Government offer in evidence a statement furnished by the Lehigh Coal and Navigation Company in regard to its circular prices, etc., as follows:

Statement furnished by the Lehigh Coal and Navigation Company in response to a request by counsel for the Government for a statement showing the circular and actual prices at Philadelphia, New York tide, and New England points during the 3 years last passed. 761

Since September 1, 1910, this company has issued no line circulars and has not issued any f. o. b. tide circulars since some time prior to September 1, 1910. The only document in the nature of a circular which has been issued during the past 3 years is a sheet attached hereto by which the customers of the company were notified that the regular prices of the company on prepared coal should be increased 10 cents a ton, and on pea and smaller 5 cents a ton, subsequent to September 1, 1913, by reason of the Pennsylvania law imposing a tax on anthracite coal. The "full circular prices" of the company referred to in this sheet were not prices fixed by any printed circulars, but were merely the regular prices charged by the company.

The price demanded by the company for its product is necessarily regulated by the price fixed in the circulars of the Philadelphia & Reading Coal & Iron Company and of the Lehigh Valley Coal Sales Company, which circulars are printed and distributed to the public.

In certain special territories, where the coal mined by this company is in special demand, and is considered superior to others for the purpose of the industries therein located, this company demands and 762 receives a price from 10 to 20 cents a ton in excess of the circular prices of the companies above referred to. In other territories it demands and receives a price equal to these circular prices, and in some other territories receives a price less than these circular prices. The whole matter is controlled by the demands of the consumers and by their desire for the quality of coal furnished by this company.

The actual prices received by the company on prepared sizes of coal at Philadelphia, at New York tide, and at New England points during the past 3 years have been as follows:

THE LEHIGH COAL & NAVIGATION COMPANY.

Average prices received f. o. b. vessels, New York Harbor, years 1911, 1912, 1913.

	1913	1912	1911
Broken	$4.462	$4.401	$4.249
Egg	5.058	5.085	4.688
Stove	5.069	5.105	4.725
Chestnut	5.303	5.265	4.886
Total prepared	5.005	4.989	4.623

THE LEHIGH COAL AND NAVIGATION COMPANY.

Average prices received at mines, years 1911, 1912, 1913.

ON SHIPMENTS TO PHILADELPHIA AND NEW ENGLAND. 763

	Broken.	Egg.	Stove.	Chestnut.
PHILA.				
1911		3.416	3.492	3.698
1912	3.25	3.721	3.873	4.065
1913		3.516	3.924	4.092
NEW ENGLAND.				
1911	3.00	3.209	3.283	3.602
1912	3.138	3.538	3.575	3.674
1913	3.150	3.530	3.641	3.912

THE LEHIGH COAL & NAVIGATION COMPANY.

Average prices received at mines, years 1911, 1912, 1913.

	1913 average.	1912 average.	1911 average.
Lump	$3.455	$3.070	$?.888
Broken	2.971	2.888	2.757
Egg	3.519	3.577	3.207
Stove	3.649	3.704	3.345
Chestnut	3.881	3.848	3.550
Total prepared	3.631	3.624	3.310

NOTES.

The figures shown above are on all the coal sold by the company at the above points, with the exception of the figures for New Eng-
764 land and for Philadelphia. The figures for New England and for Philadelphia are ascertained by an average of the sales to the largest customers of the company at such points, rail delivery, and represent substantially, although not with mathematical accuracy, the prices realized on sales on New England and Philadelphia territory, rail delivery.

The rates above specified are the rates f. o. b. mines, with the exception of the rates to New York tide, which include the freight rates.

The prices at New England points and Philadelphia are rail delivery.

Upon all sales of coal shown in the above statements a discount of 50 cents per ton was allowed April 1st, this reduction decreasing 10 cents per ton per month until September 1st. All prices are without deduction for selling expenses.

The attached document referred to is as follows:

PHILADELPHIA, *August 20th, 1913.*

THE LEHIGH COAL AND NAVIGATION COMPANY.

(In circle with red centre): OLD COMPANY LEHIGH.

Effective September 1st, 1913, the full circular prices of

OLD COMPANY'S LEHIGH COAL.

will be advanced as follows:

765 Ten cents (10c.) per ton on prepared.
Five " (5c.) " " " pea and smaller sizes.

Above advances are made necessary as the result of laws recently enacted by the State of Pennsylvania.

All sales subject to printed conditions of delivery.

RICHARD T. DAVIES, *General Coal Agent.*

Counsel for the Government also offer in evidence a statement in regard to the manner of voting the stocks held by the Lehigh Coal and Navigation Company, as follows:

1. In the case of the Lehigh & New England Railroad Company and Alliance Coal Mining Company stock ownership, a proxy is given by the Lehigh Coal and Navigation Company in favor of its president and secretary, or either of them, to vote the stock at the annual meetings of the said railroad and mining companies. In each instance the board of managers of the Lehigh Coal and Navigation Company instructs the officers to whom the proxy is given to vote for a specific ticket.

2. In the case of the Lehigh & Hudson River Railway Company, the Lehigh Coal and Navigation Company gives a proxy in favor of the president (Lewis A. Riley), vice president (Morris Rutherfurd), and secretary (John Sayer), of the Lehigh & Hudson River Railway Company, and after the annual meeting of the said company the names of the directors elected are reported to the board of the Lehigh Coal and Navigation Company for their information. 766

3. In the case of the Lehigh & Wilkes-Barre Coal Company, to the best of my knowledge and belief, no proxy has been given by the Lehigh Coal and Navigation Company to vote the stock owned by it in that company.

Mr. COUDERT. Mr. Drinker, would you be good enough to explain what you mean by the language in this statement (p. 373) that "the price demanded by the company for its product is necessarily regulated by the price fixed in the circulars of the Philadelphia & Reading Coal and Iron Company and of the Lehigh Valley Coal Sales Company, which circulars are printed and distributed to the public?"

Mr. DRINKER. I believe that that was explained by the following paragraph—that it is an impossibility to obtain much more for coal than the price charged for similar coal by the other companies; that, when the circulars of the Philadelphia & Reading Coal and Iron Company and the Lehigh Coal Sales Company come out, that necessarily fixes an approximate maximum charge for coal. In some instances the Lehigh Coal and Navigation Company, by reason of its superior product, is enabled to obtain a slightly higher price.

Mr. COUDERT. Mr. Drinker, you were to furnish us with a statement regarding the Panther Creek Railroad.

Mr. DRINKER. Mr. Turner's company owns that railroad and he has 767 prepared a statement.

A statement, as called for by the Government, containing a history of the Panther Creek Railroad, was furnished by Mr. Turner, as follows:

The Panther Creek Railroad was constructed by the Lehigh Coal & Navigation Company in the years 1846 and 1847. The road as originally built extended from a point of connection with the Philadelphia & Reading Railway Company at Tamaqua, in Schuylkill County, Pennsylvania, through the Panther Creek Valley to Lansford

and Summit Hill, in Carbon County, and connected at or near the latter point with an incline plane and gravity railroad extending across the mountain to the canal on the Lehigh River at Mauch Chunk. This incline plane was a substantial part of the Panther Creek Railroad, and prior to 1872 was used extensively for the shipment of coal in connection with the Lehigh Canal and freight from the canal to points in the Panther Creek Valley. Upon the completion in 1872 of the Nesquehoning Tunnel (to which further reference is made hereafter) this incline plane and gravity railroad ceased to be used for the transportation of freight shipments, and in 1874 was sold. Since then it has been operated exclusively for passenger traffic, principally summer tourists, being known as the "Switchback Railroad."

To appreciate the service rendered by the Panther Creek Railroad,
768 it is necessary to know the physical aspects of the territory served by it. The Panther Creek Valley is a cul-de-sac, being surrounded on the north, south, and east sides by mountains, the only available natural outlet for a railroad being at Tamaqua, at the western end. At the eastern end of the valley is the borough of Summit Hill with a population of 4,500; on the slopes of the mountains are the boroughs of Lansford and Coaldale, with populations of 9,000 and 5,500, respectively, and as above stated the borough of Tamaqua, having a population of 10,000, is at the western end. There is also more or less population between these points, the estimated population of the valley, excluding Tamaqua, being 25,000. At Lansford is located the offices and shops of the Lehigh Coal & Navigation Company, which mines approximately 4,000,000 tons of anthracite coal per year. The people living in the Panther Creek Valley are extremely prosperous, are well housed, and their freight transportation requirements are supplied exclusively by the tracks of the Panther Creek Railroad. The volume of miscellaneous freight handled is large and constantly increasing. The passenger requirements have been supplied by trains operated by the Panther Creek Railroad and the Central Railroad of New Jersey, the latter company having a trackage right for its passenger trains between Hauto and Tamaqua; in addition, there is now an electric or trolley railroad operating between Mauch Chunk, Tamaqua, and beyond. The entire output of coal mined by the Lehigh Coal & Navigation Company in the Panther Creek Valley and all the supplies required for the operation of its mines and the construction and maintenance of its breakers and other facilities therein have of necessity been transported over the rails of the Panther Creek Railroad, inasmuch as there are no other railroad facilities.

769 In 1872 the Nesquehoning Tunnel, extending through the mountain separating the Panther Creek Valley from the Nesquehoning Valley on the north, was completed at a cost of between $500,000 and $600,000, and the Panther Creek Railroad was thereupon extended through this tunnel and beyond to a point of connection with the Nesquehoning Valley Railroad, then and since leased and operated by the Central Railroad of New Jersey. Subsequently this line was extended farther to the storage yards established by the Lehigh Coal & Navigation Company, some distance east of Hauto, and to other points in the vicinity thereof.

In July, 1912, the lines of the Lehigh & New England Railroad having been constructed from Danielsville in Northampton County,

to Tamaqua, a distance of about 35 miles, that company was granted trackage rights over the Panther Creek Railroad and at once began the operation of its trains thereover, thus affording an entirely new and independent means of communication to and from the Panther Creek Valley. The extension of the Lehigh & New England Railroad to Tamaqua was commenced in 1910 and completed, as above stated, in July, 1912. It was intended that the Lehigh and New England 770
Railroad, upon the completion of its line to Tamaqua, should acquire the Panther Creek Railroad and make it a part of its system, although no formal action was taken, but the consummation of this plan was deferred temporarily, and instead a trackage agreement for the term of one year was made on May 14th, 1912, effective June 1st, 1912. At or about the time of the expiration of the trackage agreement and before this suit was commenced it was determined to carry the original plan into execution, and arrangements were made for the incorporation of the Panther Creek Railroad Company, and thereupon all the tracks theretofore owned and operated under the name of the Panther Creek Railroad—in all about 52 miles, as well as all the equipment used in the operation thereof, 15 engines, 160 cars, and all other railroad appliances—were sold and transferred to the Panther Creek Railroad Company, and immediately thereafter the property and franchises of that company were merged and consolidated with those of the Lehigh & New England Railroad.

The price paid by the Panther Creek Railroad Company for the property and franchises, excepting the equipment, was $250,000, 771
subject to the payment of a yearly rent of $109,123.28, and the further sum of $262,253.23, being the appraised value of the equipment. The cash payment of $250,000 represented the fair value of the right of way, which had never been charged upon the books of the company, and the yearly rental of $109,123.28 represents 8 per cent upon the actual cost of the tracks, tunnel, and other necessary appurtenances. There was no increased valuation placed upon the property when it was merged and consolidated with the Lehigh & New England Railroad. By reason of the merger and consolidation of the property and franchises of the Panther Creek Railroad Company with the property and franchises of the Lehigh & New England Railroad Company the latter now owns and operates all the railroads and railroad property heretofore operated as the Panther Creek Railroad, and thus gives to the inhabitants and industries formerly served by it an additional and independent means of transportation to and from all points on the lines of the Lehigh & New England system, including New York, tidewater, as well as to and from points reached via the Lehigh Valley; Delaware, Lackawanna & Western; Pennsylvania; New York; Susquehanna & Western; Erie; New York; Ontario & Western; West Shore, and New York, New Haven & Hartford Railroad Companies, all of which lines are reached by the 772
Lehigh & New England Railroad and connected therewith.

The lines shown upon the map submitted by the Government marked "Panther Creek R. R." should be shown as a part of the Lehigh & New England system.

The line shown upon said map as extending from Mauch Chunk to Lansford and marked "C. R. R. of N. J." should be eliminated, as same does not exist.

Mr. KINGSBURY. It is understood that certain corrections will be made in the map heretofore offered by the Government.

Mr. REYNOLDS. Counsel for the defendants say that they assume no responsibility for that map, because it is inaccurate and will be so proven by the defendants when they come to put in their evidence.

Mr. KINGSBURY. Mr. Drinker, you were also going to furnish us with a statement about the relations between the Lehigh Coal & Navigation Company and the Lehigh & New England Railroad.

Mr. DRINKER. Mr. Turner will furnish that.

Mr TURNER. I understood you to ask for a statement with regard to the Lehigh & New England Railroad, and that has been prepared.

Mr. Turner submitted the following statement:

773 "The Lehigh & New England Railroad Company is the successor of numerous railroad corporations, the first of which was created by a special act of the Legislature of New Jersey, in 1873, under the name of the Boston & South Mountain R. R. Co. This company, in conjunction with a similar corporation organized under the laws of Pennsylvania, contemplated the construction and operation of a line of railroad extending from Harrisburg, Pa., to a point in the State line between New Jersey and New York, and thence to the Hudson River, at or near Poughkeepsie, with a view of connecting with a railroad then under consideration, which contemplated the construction of what is now generally known as the Poughkeepsie Bridge Railroad. All of these railroads met with financial troubles and were not completed until 1889, or thereabouts. At that time the idea of extending to Harrisburg was temporarily abandoned, and the line as actually constructed by the Pennsylvania, Poughkeepsie & Boston Railroad Company extended from Slatington, in the State of Pennsylvania, a short distance from the anthracite coal fields, across the States of Pennsylvania, New Jersey, and New York to a point of connection with the Erie Railroad at Pine Island, New York, and thence over the tracks of the Erie Company to Campbell Hall, where connection was made with the Philadelphia, Reading & New England Railroad, which had constructed a line from that point across the Hudson River and owned and operated a railroad extending as far east as Hartford.
774 Both of these lines were at that time owned by practically the same interests and had no financial or other affiliations with other railroad companies. The purpose of these railroads was to handle traffic to and from New England so as to avoid the delays, difficulties, and expense incident to the route via New York Harbor and the Harlem River gateway. For a time during the period when Mr. McLeod was president of the Philadelphia & Reading a large amount of traffic, principally anthracite coal, was shipped to New England via the Poughkeepsie Bridge gateway, but later on these shipments were discontinued and such trackage or other rights as the Philadelphia & Reading Company had in this route were abandoned. This was followed by foreclosure proceedings and the eventual sale of both lines, the Pennsylvania, Poughkeepsie & Boston to the Lehigh & New England Railroad Company"—I am not giving you the legal details, just the effect—"and the Philadelphia, Reading & New Eng-

land to the Central New England Railroad Company, the latter subsequently being acquired by the New York, New Haven & Hartford Railroad Company, which rebuilt the Poughkeepsie Bridge and otherwise improved the property and increased its business to an extent beyond that contemplated by its projectors. The Lehigh & New England Railroad acquired the property and franchises of the Pennsylvania, Poughkeepsie & Boston Railroad Company in April, 1895, and since that time has improved and extended its lines to such an 775
extent that the gross earnings, which were about $50,000 per annum during the first few years, have increased to $1,793,785.14 for the year ending June 30, 1913. This growth has been due very largely to the construction of branch lines, to the great slate and cement industries in Northampton County, Pennsylvania, practically all of which are now reached by the Lehigh & New England lines, and most of which, prior to the extensions, were served only by the Bangor & Portland Railway, which about 1901 was acquired by the Delaware, Lackawanna & Western Railroad Company.

"From the classification of tonnage statement hereto attached, it will be noted that the tonnage handled by the Lehigh & New England Railroad for the year ended June 30, 1913, amounted to 2,858,165 tons, as compared with 1,810,340 tons for the year ended June 30, 1912, and that the principal items of this tonnage for the year June 30, 1913, consisted of cement, brick, and lime 898,208 tons; anthracite coal 780,297 tons; bituminous coal 537,020 tons; and stone, sand, and like materials 356,253 tons. The anthracite tonnage amounted to but 27 per cent of the total, and for the year shows an increase over 1912 of about 468,000 tons out of a total increase of 1,048,000 tons. In this connection it should be borne in mind that the Tamaqua Extension, to the mines of the Lehigh Coal & Navigation Company, 776
was not completed until July 1, 1912.

"From the year 1900 the Lehigh & New England Railroad has been vigorously fighting for business in every direction and with this end in view has extended its lines to slate quarries and cement mills in Northampton County and to other industries elsewhere, which, prior thereto, were reached in many cases exclusively by one or another of the following lines: Delaware, Lackawanna & Western; Central Railroad of New Jersey; Pennsylvania; and Lehigh Valley. In 1910 it commenced the construction of its line to the anthracite coal fields and completed same about July, 1912. In 1911 it made a trackage agreement with the New York, Susquehanna & Western Railroad, effective July 1, 1912, under which it operates its own trains for the handling of anthracite coal to New York tidewater. It is now engaged in the construction of a branch line to Catasauqua, Pa., which will tap the Empire Steel & Iron Company, and other large industries in that locality, now served by the Central Railroad of New Jersey, Lehigh Valley, and Philadelphia & Reading Companies. It is also building a branch line to the great plant of the New Jersey Zinc Company at Hazard, Carbon County, which is served exclusively by the Central Railroad of New Jersey, and is ready and willing to extend its lines in the territory covered by its chartered rights, 777
without fear or favor, wherever the tonnage justifies it in so doing. It is now, and always has been, an independent line, due to the fact that it has no alliances of any character with any other railroad com-

pany. This position of independence is due, in large measure, to the fact that it has direct connection with practically every trunk in the eastern part of Pennsylvania and vicinity, namely, with the Philadelphia & Reading at Tamaqua and Slatington; with the Lehigh Valley at Lizard Creek, Slatington, and Scranton; with the Central Railroad of New Jersey at Hauto and Bethlehem; with the Pennsylvania at Martins Creek; with the Delaware, Lackawanna & Western at Bath, Bangor, Portland, and Augusta; with the Northampton & Bath at Bath; with the New York, Susquehanna & Western at Hainesburg Junction and Sussex; with the Erie at Goshen; and with the New York, Ontario & Western, West Shore, and New York, New Haven & Hartford at Campbell Hall, New York.

"Practically all the tonnage handled by the Lehigh & New England originates or terminates on its lines, which cover a territory teeming with great industries.

"The main line extends from Slatington, Pa., to Campbell Hall, New York, and from this line there are many branches, the most important of which are the Tamaqua Extension, which comprises the railroads formerly operated as the Panther Creek Railroad in the Panther Creek Valley and vicinity; the Hazard Branch, now under construction to the plant of the New Jersey Zinc Company; the
778 Bethlehem Branch, extending from Benders Junction to the borough of Bethlehem; the Martins Creek Branch, extending from a point west of Bath to Martins Creek, where connection is made with the Pennsylvania Railroad; the Catasauqua Branch, now under construction, extending to the plant of the Empire Steel & Iron Company, and other industries in the vicinity of Catasauqua; the Saylorsburg Branch, extending through the Wind Gap to Saylorsburg, forming part of a contemplated line to Stroudsburg; the Bangor Branch, extending to Bangor, and the slate industries in the vicinity; the Nazareth Branch, extending to Nazareth in the heart of the cement industry; the East Bangor Branch, extending to East Bangor and its adjoining slate quarries.

"The mileage operated by the Lehigh & New England Railroad Company aggregates 268.75 miles, of which 172.41 miles are owned, and the balance, 96.34 miles, are operated under trackage agreements with the New York, Susquehanna & Western and Erie Companies. The Lehigh & New England is an active competitor of the Central Railroad of New Jersey, Lehigh Valley, Pennsylvania, Delaware, Lackawanna & Western, and New York, Susquehanna & Western Companies. The operation of the road is conducted by a staff of officers and employees under the direction of the superintendent, whose office is located at Bethlehem; the traffic, accounting, engineer-
779 ing, and other operating departments are also located at Bethlehem.

"The relation of the Lehigh & New England to the Lehigh Coal & Navigation Company, aside from the question of stock ownership, is simply that of a common carrier, and in the actual conduct of its operations there is no difference whatever between the methods employed in the handling of the shipments of the Lehigh Coal & Navigation Company, which now constitute but a small proportion of its business, and prior to July 1st practically none at all, and those of any other shipper. In the case of Lehigh Coal & Navigation Company shipments, the methods prescribed by the Interstate Commerce Com-

mission and the public service commissions of Pennsylvania, New Jersey, and New York are strictly complied with, as is also the case with respect to all its other business.

"The Lehigh & New England Railroad forwards the tonnage originating on its lines in accordance with the instructions received from its shippers, and there is no discrimination in favor of any of its connections, with all of whom it has tariffs and traffic arrrangements, such as is usual with railroad companies. Its inbound tonnage is received from all of its connections, and there are no restrictions of any character as to the routing of same."

Mr. COUDERT. May I ask you, aside from the directors and officers which the Lehigh Coal & Navigation Company and the Lehigh & New England Railroad Company have in common, have they any other 780
employees or persons in their service in common?

Mr. TURNER. Not that I am aware.

Mr. COUDERT. If there are any such, will you let me know of the fact?

Mr. TURNER. Yes.

Mr. COUDERT. Any persons who have an employment from both companies in any capacity.

Mr. TURNER. I think the only one—Mr. Drinker reminds me of it—is the superintendent, Mr. E. H. Shipman, who holds what we consider that honorary position of superintendent of the canals.

Mr. COUDERT. He is both in the employ of the Lehigh Coal & Navigation Company and the railroad company?

Mr. TURNER. I think he receives no compensation from the navigation company for that honorary position.

Mr. COUDERT. His compensation is paid by the railroad?

Mr. TURNER. By the Lehigh & New England Railroad.

Counsel for the Government reads in evidence, from the annual report for the year ended December 31, 1913, of the Lehigh Coal & Navigation Company, the list of managers and officers, as follows:

President, S. D. Warriner.

Managers.—Samuel Dickson, Bayard Henry, Lewis A. Riley, John 781
S. Wentz, Henry Pratt McKean, R. Dale Benson, Erskine Hewitt, Edw. Walter Clark, Richard Y. Cook, C. S. W. Packard, S. D. Warriner, George H. Frazier.

Officers elected by the board of managers.—Vice presidents, Rollin H. Wilbur, Edwin Ludlow; vice president and secretary, H. F. Baker; assistant secretary, R. V. Pierce; treasurer, Henry H. Pease; assistant treasurer, O. E. Neff; comptroller, E. M. Reynolds; assistant comptroller, J. C. Campbell.

Also certain short passages marked on pages 7, 8, and 11 of the same report, which is in evidence. The passages read are as follows:

COAL MINING DEPARTMENT.

The production of coal by your company and its tenants during the past two years (stated in gross tons) was as follows:

782

	1913	1912
	Tons.	*Tons.*
Mined by company	3,612,711	3,241,388
Recovered from culm banks by company	711,851	432,557
Total produced by company	4,324,562	3,673,945
Less fuel consumed by company	521,495	398,361
Commercial coal produced by company	3,803,067	3,275,584
Mined by lessees of company	209,018	183,892
Recovered from culm banks by lessees of company	12,673	23,345
Total produced by lessees of company	221,691	207,237
Less fuel consumed by lessees of company	29,991	25,732
Commercial coal produced by lessees of company	191,700	181,505
SUMMARY.		
Total mined by company and its lessees	3,821,729	3,425,280
Total recovered from culm banks by company and its lessees	724,524	455,902
Total produced by company and its lessees	4,546,253	3,881,182
Less fuel consumed by company and its lessees	551,486	424,093
Total commercial coal produced by company and its lessees	3,994,767	3,457,089

783 (Page 11:) "During the year the railroad in the Panther Creek and Nesquehoning Valleys owned by your company, and generally known as the Panther Creek Railroad, was sold to the Panther Creek Railroad Company, which was thereafter merged and consolidated with the Lehigh and New England Railroad Company."

Counsel for the Government also reads from the report of the Lehigh and New England Railroad Company for the year ended June 30, 1913, the list of directors and officers, as follows:

LEHIGH AND NEW ENGLAND RAILROAD COMPANY.

Board of directors.—Lewis A. Riley, Samuel Dickson, Bayard Henry, John S. Wentz, Edward Walter Clark, Richard Y. Cook, Wm. Jay Turner, Edward J. Dox, George H. Frazier.

Officers.—S. D. Warriner, president; Rollin H. Wilbur, vice president and general manager; Wm. Jay Turner, vice president and general counsel; H. F. Baker, vice president and secretary; Henry H. Pease, treasurer; E. M. Reynolds, Comptroller.

784 Counsel for the Government also reads, from the report of the Lehigh & Hudson River Railway Company, for the year ended June 30, 1913, the list of directors and officers, as follows:

Directors.—George F. Baer, Robert W. DeForest, George D. Dixon, Thomas P. Fowler, George H. Frazier, Lewis A. Riley, Morris Ruth-

rfurd, Edward T. Stotesbury, Eben B. Thomas, William H. Truesdale, Frederick D. Underwood, Samuel D. Warriner, Rollin H. Wilbur.

Officers.—Lewis A. Riley, president; Morris Rutherford, vice president and general manager; John Sayer, secretary and treasurer. General office, Warwick, New York; Philadelphia office, 437 Chestnut Street.

Counsel for the Government also offer in evidence a statement furnished by Mr. Heebner, in regard to the Philadelphia & Reading Terminal Railroad Company, as follows:

The Philadelphia and Reading Terminal Railroad Company was incorporated in April, 1888, at the instance of the Philadelphia and Reading Railroad Company. It has an outstanding full-paid capital 785
stock of $8,500,000, consisting of 170,000 shares of a par value of $50 each. It owns a valuable passenger terminal and office building in the heart of the city of Philadelphia at 12th and Market Streets, and its railroad extends, on an elevated structure, from the terminal building northeastwardly to a point of connection with the line of the Philadelphia, Germantown and Norristown Railroad Company (held by Philadelphia and Reading Railway Company under long-term lease) near Fairmount Avenue, Philadelphia; with a branch line extending by a curve to the north and west from a point near Pearl Street to a point of junction with the line of Philadelphia and Reading Railway Company on Noble Street, between Thirteenth and Broad Streets, in that city.

Its terminal station and railroad property were acquired and constructed between 1891 and 1893 at a cost of more than $8,500,000 in cash.

Almost all the money for this acquisition and construction was procured in the following manner and as a result of the following financial and business arrangement:

Two thousand five hundred of the terminal company's stock having been issued at par for cash, the Philadelphia and Reading Railroad Company acquired the remaining 169,950 shares (of an aggregate par value of $8,497,500) by issuing and delivering to the terminal company a series of the Philadelphia and Reading Railroad Com- 786
pany's $1,000 bonds, amounting in the aggregate to $8,500,000, dated May 1, 1891, payable May 1, 1941, with interest thereon, payable quarterly, at the rate of 5 per centum per annum. These bonds were debentures and were secured by a deposit or pledge with the Provident Life and Trust Company, of Philadelphia, trustee, of the 169,950 shares of the capital stock of the terminal company so acquired. This pledge is made by an indenture dated May 1, 1891. The terminal company guaranteed the payment of the principal and interest of these bonds and, to secure the due performance of this contract of guaranty which was endorsed on every one of the bonds, conveyed in trust to the Provident Life and Trust Company, of Philadelphia, trustee, by indenture, dated May 1, 1891, all its property, railroad and franchises, including the contract and lease now to be mentioned.

By indenture dated May 1, 1891, between the Philadelphia and Reading Terminal Railroad Company, the Philadelphia and Reading

Railroad Company, and the Provident Life and Trust Company, of Philadelphia, trustee, there were granted and demised to the Philadelphia and Reading Railroad Company, and its successors, for a period of 999 years from and after May 1, 1891, the *sole* and *exclusive* right of holding, using and enjoying *all* the railroad and property then owned, or which thereafter might be acquired, by the terminal
787 company, together with all franchises, rights, privileges, and immunities thereto belonging or appertaining, to the extent that the same might be necessary or convenient to enable the said grantee to have, possess, use, and enjoy all the rights and privileges by this agreement demised and granted.

All these transactions were in pursuance of a single plan and the three indentures above mentioned were executed and delivered on the same day, May 1, 1891.

The bonds thus issued, guaranteed, and secured were considered a first-class security and were readily marketed.

The *practical* result and effect, however, of this whole arrangement was substantially this, that, without incurring any further obligation than it would have had if it *owned* the property absolutely; that is to say, the obligation to maintain, to keep in repair, to pay all taxes and assessments, to operate for public use, from time to time to pay the stipulated interest on its *own* bonds amounting to $8,500,000 and to pay the principal thereof at maturity, the Philadelphia and Reading Railroad Company acquired the sole and exclusive right to hold, use, enjoy, and operate in the service of the public, for a period of 999 years from and after May 1, 1891, this valuable terminal railroad property situated in the heart of the city
788 of Philadelphia; a property that cost more than $8,500,000 in cash to acquire and construct and that was essential to the business of the grantee's own line of railroad and to the growth and development of the same; and a property from a part of which, because of its fortunate central location, large revenue could be obtained from leases and grants of privileges for subordinate uses not inconsistent with the property's use and efficiency as a terminal *railroad* property.

Upon the sale under foreclosure, in 1896, of the property and and franchises of the Philadelphia and Reading Railroad Company, including, inter alia, its leasehold interests and its rights under contracts and agreements, the purchasers thereat acquired and conveyed to Philadelphia and Reading Railway Company all the rights and privileges formerly held by the said railroad company under and by virtue of the above mentioned tripartite agreement of May 1, 1891; and the railway company wrote on its books an assumption of the said $8,500,000 bonds of the Philadelphia and Reading Railroad Company. And the railway company thus acquired—*substantially* without incurring any further obligation in respect of the property than it would have had if it *owned* it absolutely—the sole and exclusive right to hold, use, and enjoy, for a period ending 999 years from and after May 1, 1891, all this valuable terminal railroad property from *parts* of which alone, that are not used for railroad purposes, including, inter alia, the market house stalls, the cold storage rooms, the business storerooms, etc., etc., it receives a *net* income of about
789 $180,000 a year.

The ownership of the stock of the Philadelphia and Reading Terminal Railroad Company—subject to the pledge thereof to the trust

company to secure the $8,500,000 bonds originally issued by Philadelphia and Reading Railroad Company—became vested in *Reading Company* upon reorganization in November, 1896.

Counsel for the Government also offer in evidence the statement furnished by Mr. Heebner in regard to the manner of voting the stocks owned by the Reading Company as follows:

The shares of stock owned by Reading Company in other corporations, and not pledged under mortgages or deeds of trust, are voted at the annual or other meetings of the stockholders thereof by means of proxies executed by the president or vice president of Reading Company and attested by the secretary or an assistant secretary thereof, to some person or persons therein specifically designated. Occasionally Mr. Baer is made the proxy to vote these shares at such meetings as he may attend, but more generally it is some one other than he. This includes a majority of the subsidiary companies.

In the case of shares which have been pledged under a mortgage or deed of trust, the trustee of such indenture executes jointly with Reading Company the necessary proxy or proxies for use at stockholders' meetings. Mr. Baer has also occasionally voted these proxies at meetings attended by him, but in the great majority of cases it is some person or persons other than he. Included in this class are the shares of the following-named corporations: Philadelphia and Reading 790
Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey, the Wilmington and Northern Railroad Company. Of course, where shares are pledged under a mortgage or deed of trust, the certificates representing these shares are duly registered in the name of the trustee, and each registration contains a statement of the particular trust under which the shares are held.

I enclose herewith forms of proxies which are most generally used by Reading Company for the above purpose:

"*Know all men by these presents:*

"That Reading Company hereby appoints ..... to be its substitute and proxy, for it, and in its name and behalf, to vote at the election for president and directors or other officers of ..... and on any other business of the said company, at the meeting of the stockholders to be held on .....

"In witness whereof the said Reading Company has caused to be hereunto affixed its corporate seal, duly attested by its president and secretary, this .... day of ..... A. D. ..

"READING COMPANY,
"By ....., *President.*

"Attest:
"....., *Secretary.*"

"*Know all men by these presents:* 791

"That Reading Company and the Central Trust Company of New York, as trustee under mortgage of Reading Company and the Philadelphia and Reading Coal and Iron Company, dated January 5th, 1897, hereby appoint ..... to be their substitute and

proxy for them, and in their names and behalf to vote at the election for president and directors or other officers of ..... and on any other business of the said company, at the meeting of the stockholders to be held on ..... but not for any purpose inconsistent with the provisions or purposes of said indenture.

"In witness whereof the said Reading Company and Central Trust Company of New York have caused to be hereunto affixed their corporate seals, duly attested, this .... day of ..... A. D., 1 ..

"READING COMPANY,
"By ....., *President.*

"Attest:
"....., *Secretary.*
"CENTRAL TRUST COMPANY OF NEW YORK,
"By ....., *Vice-President.*

"Attest:
"....., *Secretary.*"

792 "*Know all men by these presents:*

"That Reading Company and the Pennsylvania Company for Insurances on Lives and Granting Annuities as trustee under Jersey Central collateral trust deed of Reading Company, dated April 1, 1909, hereby constitute and appoint Geo. F. Baer, George F. Baker, Charles Steele, and Robert W. de Forest, or either of them, to be their substitute and proxy, for them, and in their names and behalf to vote at the election of directors of the Central Railroad Company of New Jersey and on any other business of the said company, at the meeting of the stockholders to be held on Friday, September 19th, 1913, or at any adjournment of said meeting, but not for any purpose inconsistent with the provisions or purposes of said indenture.

"In witness whereof the said Reading Company and the Pennsylvania Company for Insurances on Lives and Granting Annuities have caused to be hereunto affixed their corporate seals, duly attested, this sixth day of August, A. D. 1913.

"READING COMPANY,
"By ....., *Vice President.*

"Attest:
"....,
Secretary.
"THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES,
"By ....., *President.*

"Attest:
"....., *Secretary.*

*793 "*Know all men by these presents:*

"That Reading Company and Girard Trust Company, as trustee under the Wilmington and Northern Railroad stock trust agreement, dated March 1, 1900, hereby appoint ..... to be their substitute and proxy, for them, and in their names and behalf to vote at the election for directors or other officers of the Wilmington and Northern Railroad Company and on any other business of the said company, at the meeting of the stockholders to be held on

* So numbered in original.

Monday, May ...., 191.., but not for any purpose inconsistent with the provisions or purposes of said agreement.

"In witness whereof the said Reading Company and Girard Trust Company have caused to be hereunto affixed their corporate seals, duly attested, this .... day of ....., A. D. 19..

"READING COMPANY,

"By ....., *President.*

"Attest:

"....., *Secretary.*

"GIRARD TRUST COMPANY,

"By ....., *President.*

"Attest:

"....., *Secretary.*"

Counsel for the Government reads in evidence from the record *796 in the old Reading case the following further extracts:

From Vol. II, pages 712, 713, extract from the report of the Philadelphia & Reading Railroad Company for 1893, as follows:

Every effort has been made to extend the business which the railroad company exchanges with its connecting railroads. So great a volume of freight traffic originates at the Reading Company's mines and in the busy region whose iron and other manufactured products seek an outlet to market over its railroads, and this region furnishes so large a market for food products, articles of clothing, and an infinite variety of manufactured products that connecting railroads will always be glad to carry freight destined from or to the Reading Company's territory. The management does not feel, therefore, that there is any risk of the crippling of the development of the business of the Reading companies because they no longer control the railroads or the coal mines that have lately been detached from their system. On the contrary, they have felt great relief in having no longer to provide for the financial requirements of these properties, and they find the management of the remaining property is sufficient to require their best efforts and all the capital they can command. They feel that no further acquisitions of railroads or *797 mining property should be contemplated in the near future, and hope that if they can secure a reasonable share of the growth of the country's business and can conduct it with economy and prudence, they will be doing all that is possible to build up the value of the securities of the two Reading companies.

The relations with all connecting railroads are friendly and cordial, and in respect to the principal railroad systems which were lately in close alliance with the Reading Company, the exchange of business and the division of earnings arising therefrom is made on the same lines as before the leases of 1892, and in accordance with the rules that have been agreed upon during many years of more or less active rivalry.

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* So numbered in original.

From Vol. IV, marked passage on page 206, from the examination of Marshall E. Johns, superintendent of the New York, Susquehanna & Western Railroad Company at the time of his examination, as follows:

Q. The New York, Susquehanna and Western acquired terminals at Edgewater at what time?—A. They were constructed some time in the year 1893, and operations started some time in the year—the terminal time table of the Edgewater Branch, No. 1, was dated September 11, 1894, so it was about that time that the work had been completed and the terminal ready for occupancy.

798 *From the same volume, pages 244 and 245 as marked, from the examination of Frank E. Smith, a freight agent of the Erie Railroad Company at the time of his examination, as follows:*

By Mr. McReynolds:

Q. When did you first become acquainted with the New York, Susquehanna and Western Road?—A. In December, 1894, as near as I can remember.

Q. When was the road constructed?—A. I am not familiar with the periods at which the different sections of the road were finished. That was all done prior to my connection with it.

Q. You went with the road in 1894?—A. Yes, sir.

Q. Where were its lines?—A. Its lines extended from what was known as West End or Marion, New Jersey.

Q. Is that on the bay?—A. No; it is about three miles west of Jersey City.

Q. On the Pennsylvania lines?—A. It was the point of connection with the Pennsylvania lines. The lines extended west to Wilkes-Barre, Pennsylvania, with the branch extending from Two Bridges to Middletown, New York, another branch of about three miles in New York, from Passaic Junction to Passaic, and also the Edgewater Branch running from Middletown to Edgewater three miles, and the only part constructed while I was with them was a little spur, about a mile long, running into Lodi, and what is known as the Susquehanna Connecting Railroad up in the coal regions connecting with the coal properties.

799 Q. Was this little Susquehanna connecting road constructed after you went with the Susquehanna?—A. Yes, sir; that was constructed afterwards.

Q. When you first went with the Susquehanna it got into Jersey City over the tracks of the Pennsylvania Road, did it?—A. Do you refer to freight or passenger or both?

Q. Both.—A. Yes, sir; it got over the Pennsylvania Railroad tracks.

Q. It had an arrangement with the Pennsylvania Railroad under which it used the Pennsylvania terminal at Jersey City?—A. Yes, sir.

Q. This terminal at Edgewater, when was that constructed?—A. It was finished when I went with the company, and I think it was finished along in 1893, or possibly the first part of 1894.

From Vol. V, marked passage on pages 742, 743, and 744, from the examination of David G. Baird, secretary of the Lehigh Valley Railroad Company at the time of his examination, as follows:

Q. Since the construction of the Easton and Amboy, has the Lehigh Valley constructed a system of road connecting that road from a junction at South Plainfield with its New York Harbor system at Jersey City?—A. Yes, sir.

Q. Taking that up now as it was constructed, what was the Roselle 800
and South Plainfield Railroad Company?—A. The Roselle and South Plainfield Railroad was organized in 1885 by the Lehigh, and built a line from South Plainfield to Roselle, on the Central Railroad of New Jersey.

Q. What year was that?—A. It was incorporated in 1885.

Q. How was that financed?—A. The road was built by capital advanced by the Lehigh Valley Railroad Company, who took the stock of the Roselle and South Plainfield Railroad Company.

Q. When you say advanced in these cases, you mean the cost of construction was the amount that was advanced?—A. I do.

Q. As the road was built the bills were paid through the Lehigh Valley Railroad Company offices, by advances to the subsidiary roads?—A. That is right.

Q. And the subsidiary roads issued from time to time to the Lehigh Valley Railroad Company capital stock in amounts equal to the advances, dollar for dollar?—A. Yes, sir.

Q. That is the truth as to all of these railroads that constitute this system that we are now talking about?—A. It is.

Q. Except in one or two instances, which I will ask you to mention.—A. In a general way, that is right.

Q. What was the Jersey City Terminal Railroad?—A. The Jersey City Terminal Railway Company was organized in 1888 to build a terminal line on the property which the company had acquired to Jersey City, for a freight terminal, and it reaches from a junction with the National Docks Railway eastward to the exterior line of our piers 801
in New York Harbor.

Q. Was this financed in just the same way?—A. In the same way.

Q. Where are the freight terminals in Jersey City located?—A. They have a frontage on the Hudson River and south of what is called the Gap, south of the Morris Canal Gap at Jersey City, and adjoin the Central Railroad of New Jersey on the north.

Q. How extensive a terminal is that?—A. It is quite extensive.

Q. What frontage on the river?—A. Perhaps 1,500 feet. I am not quite clear as to that measurement.

Q. And extending back into Jersey City a long distance?—A. To the mainland of Jersey City; about a mile or more.

Q. It is all built up with tracks and warehouses and engine houses and the various things that go to make up a large railway terminal?—A. Yes, sir.

Q. It is not a passenger terminal, but is entirely a freight terminal?—A. Entirely a freight terminal.

Q. Besides fronting on the river it also fronts on what you call the Gap?—A. Yes, sir.

Q. Which is a navigable water with several piers extending into it?—A. Yes, sir.

Q. All of which are connected with the railway system?—A. Yes, sir.

802 Q. That is owned by the Lehigh Valley Railroad now of New Jersey?—A. The Lehigh Valley Railroad Company of New Jersey.

Also from Vol. V, pages 735 and 736, the marked passage from the testimony of David G. Baird, as follows:

Q. The Delaware, Susquehanna & Schuylkill Railroad; what is that?—A. That is a railroad entirely within the Lehigh coal district, and is a gathering railroad.

Q. What are its terminal points?—A. Stockton Junction, or Lumber Yard, on the eastern end where it forms a connection with the Lehigh Valley Railroad, and goes westward to Drifton, Eckley, and Lattimer on the north, to Oneida on the west, and also Tomhicken.

Q. It reaches a large number of coal mines?—A. It does.

Again from Vol. II, marked passages on pages 310, 311, 312, and 313, from the examination of Luther C. Smith, as follows:

Q. Where do you reside?—A. Selinsgrove, Pa.

Q. What is your present occupation?—A. Out of occupation just now; resting.

Q. You were once an officer of Coxe Bros. & Co. and of the Delaware, Susquehanna & Schuylkill Railroad, were you not?—A. Yes, sir.

(*Page 311.*)

Q. What collieries were located on the Delaware, Susquehanna & Schuylkill Railroad, or were near enough to it to be served by it in
803 the ordinary course of business?—A. Near enough to be served but not served, do you mean?

Q. You can divide your answer into two parts. You can first name the collieries which were on it and which were served by it, and then you can name those which could be served.—A. The Delaware, Susquehanna & Schuylkill Railroad was built for the purpose of taking care of the Coxe collieries, composed of Drifton, Eckley, Stockton, Beaver Meadow, Tomhicken, Derringer, and Oneida. In addition to that, the Delaware, Susquehanna & Schuylkill Railroad handled the product from what we will call the Pardee operations.

(*Page 312.*)

Q. Do you recall, roughly, the annual tonnage which was carried from these collieries by the Delaware, Susquehanna & Schuylkill Railroad?—A. For your purpose, I think, if I state a million and a quarter I would be about right.

Q. From all of those collieries?—A. Yes, sir.

Q. Coxe Bros. as well as the Pardees?—A. Yes, sir; that would have made the probable yearly shipment over the Delaware, Susquehanna & Schuylkill Railroad.

Q. There were some other collieries, were there, which, while not served by the Delaware, Susquehanna & Schuylkill, were near enough to it to be served in the ordinary course of business if their owners had so desired?—A. Yes, sir; of course, you will understand that in each instance there would have had to have been more or less track run to reach them. There were cases where the distance would not have been unreasonable. 804

Q. Can you name the most of those?—A. G. B. Markle & Co.'s Highland breaker; G. B. Markle & Co.'s Jeddo breaker (rather known as Highland No. 5), located at Jeddo mine—people call it the Jeddo breaker; G. B. Markle & Co's Oakdale breaker. Then the Wentz people had a breaker. They had a breaker located at Hazelbrook; I do not know as they had any particular name for it. In those days the Van Wickle operations at Melonsville and Coleraine had two breakers. I think that covers all, with the possible exception of a little affair that was built during the time, which I am not sure was a going concern. That is, it was not of any magnitude at the time, and I forget the names of the operators.

Q. Which railroads did the Delaware, Susquehanna & Schuylkill connect with?—A. They connected with the Lehigh Valley.

Q. At what point?—A. At a number of points—Drifton, Stockton, Harleigh Junction, Oneida Junction, Lumber Yard; those were all the connections I can think of at this time.

Q. What other railroads did it connect with?—A. It connected with the Pennsylvania Railroad at Gum Run; connected with the Philadelphia & Reading Railroad at Roan.

Q. It does not connect with the Central Railroad of New Jersey?—A. It did connect with the Central Railroad of New Jersey at Drifton, but that branch or portion of it was abandoned, and for some years now there has really been no connection with the Central Railroad of New Jersey.

Q. You mean by that that it is not used?—A. It is not used, and can not be used. It would require a rebuilding of the branch to make it fit for use. 805

(*Page 313.*)

Q. But you exchanged no freight, as a matter of fact, with the Central of New Jersey at Drifton after, I believe you said, seven or eight years ago—you do not know the date any more definitely than that?—A. No, sir; but I will say that I do not believe we ever exchanged any freight with the Central Railroad of New Jersey during my time.

Q. But it was possible?—A. It was possible until the time that they abandoned the branch.

Q. When the branch was abandoned, do you mean that the tracks were torn up or that it was just allowed to fall into disuse?—A. No; my recollection is—the rails, I guess you mean—the rails and ties were there; the ties, of course, entirely rotten, and the track was in such a bad shape that it would have been entirely out of the question to run an engine over it.

Q. I say it was just allowed to fall into disuse and gradually become worthless?—A. Worthless, as a matter of operation; yes, sir.

Q. But it was not torn up at a single stroke, and for some time after the Delaware, Susquehanna & Schuylkill, as a matter of fact,
806 ceased exchanging freight with the Central Railroad of New Jersey, it could have done so over that track before it did become worthless, could it not?—A. Oh, yes.

Counsel for the Government also offer in evidence certain extracts from the minutes of the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, as follows:

Extract from the minutes of a meeting of the board of directors of the Central Railroad Company of New Jersey, held August 11, 1890.

The following correspondence was read and ordered on the minutes:

NEW YORK, *August 4, 1890.*

A. A. McLEOD, Esq.,
President Philadelphia & Reading R. R. Co.,
Philadelphia, Pa.

DEAR SIR: It is rumored that your company contemplate the construction of a railroad from Bound Brook or its vicinity easterly towards New York, and parallel to the road of this company; and that you are aiding and participating with others in the projection of such a road, and that it is the purpose of its projectors to use the same for traffic passing over the Delaware and Bound Brook Railroad, and which would otherwise pass over the road of this company. Such a road would certainly be a competing road to the "Central"
807 and for either party to the agreements of March 30, 1876, March 17, 1879, and July 27, 1886, to aid or countenance in any way the construction of such a road, and for the purpose designated, would be a violation by such party to the spirit and letter of the agreements referred to.

The object of this communication is to inquire whether there is any, and if any, what foundation for the rumor referred to.

Very truly,

J. R. MAXWELL, *President.*

PHILADELPHIA, *August 8, 1890.*

Mr. J. R. MAXWELL,
President Central Railroad Company of New Jersey,
119 Liberty Street, New York.

DEAR SIR: I have your favor of the 4th instant, referring to a rumor that this company contemplates the construction of a railroad from the vicinity of Bound Brook easterly toward New York.

We have never contemplated for a moment the aiding nor participating with others in the promotion of any enterprise that would place the line in competition with the Jersey Central. What is to be
808 done, if anything, will be under the sole control of this company so that it will be altogether subject to the obligations of existing contracts.

Yours, truly,

A. A. McLEOD, *President.*

Extract from minutes of a meeting of the stockholders of the Central Railroad of New Jersey held May 11th, 1900, showing authorization of the guarantee by the railroad of the bonds of the Lehigh & Wilkes-Barre Coal Co. and the reasons therefor.

Whereas the Lehigh & Wilkes-Barre Coal Company has heretofore duly authorized the issue of its consolidated mortgage bonds, dated April 27, 1875, secured by a mortgage of even date to the Fidelity Insurance, Trust and Safe Deposit Company of Philadelphia, which bonds fall due on June 1, 1900; and

Whereas the said coal company owns and works mines on the line of and adjacent to the railroad branches and works of the Lehigh Coal and Navigation Company in the State of Pennsylvania, leased by the Central Railroad Company of New Jersey, in which mines the Central Railroad Company of New Jersey has an interest by reason of its ownership of stock of the said coal company and otherwise; and

Whereas the Central Railroad Company of New Jersey, as the 809
owner of a majority of the stock of said coal company desires to reduce the rate of interest on the funded debt of said coal company; and

Whereas the Central Railroad Company of New Jersey, by its board of directors, has agreed, subject to the consent of a majority in interest of its stockholders, to guarantee the payment of such of the consolidated bonds of the coal company as may be extended for ten years at the rate of four and one-half per cent interest instead of seven per cent, which is the present rate of interest on said bonds, under the following form of extension contract and guarantee, viz:

* * * * * * *

Now therefore resolved, That the stockholders of the Central Railroad Company of New Jersey hereby consent to the guarantee of the payment of said extended bonds.

Extract from the minutes of a meeting of the directors of the Central Railroad Company of New Jersey, held April 5, 1910.

* * * * * * *

Resolved, That the notice of this special meeting, to be mailed to stockholders, shall be in the following form:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
143 Liberty Street, New York City, April 5th, 1910.

To stockholders: 810

A special meeting of the stockholders of this company is hereby called to convene at noon on Monday, May 2d, 1910, at the office of the company in its terminal building at Jersey City, for the purpose of obtaining their consent to a guarantee by this company of the principal and interest of $20,000,000 consolidated four (4) per cent mortgage bonds, to be issued as of June 1st, 1910, by the Lehigh & Wilkes-Barre Coal Company, for the refunding of—

$12,175,000 4½ per cent bonds, due June 1st, 1910.
4,821,000 5 per cent bonds, due June 1st, 1910.
2,691,000 5 per cent bonds, due Nov. 1st, 1912.

(The remainder, $313,000, to be reserved for improvements.)

The Central Railroad Company of New Jersey is the owner of a majority of the stock of said coal company, and desires the rate of interest on the funded debt of said coal company reduced.

For purpose of this meeting, the stock transfer book will be closed from 3 p. m. on April 11th, 1910, until 10 a. m. on May 3rd, 1910.

If you do not anticipate attending this meeting in person, please sign and return the enclosed proxy, which, unless you otherwise specify, will be used under the direction of the present board, to con-
811 sent to such guarantee.

GEORGE F. BAER, *President.*

[NOTE.—The above notice was subsequently sent as provided for. See p. 159 of the minutes.]

Extract from minutes of the meeting of the directors of the Central Railroad Company of New Jersey, held September 20, 1910.

"By way of explanation as to the 4 per cent bonds of Lehigh & Wilkes-Barre Coal Company, held in treasury, amounting to $6,287,000, the president made the following statement:

The company held 5 per cent bonds due 6-1-1910	$4,821,000
The Lehigh & Wilkes-Barre Coal Company paid off in cash	325,000
For the balance there was received 4 per cent bonds of the L. & W.-B. C. Co.	4,496,000
This exchange was authorized by the board on April 5th, 1910.	
Through purchase, there was acquired L. & W.-B. C. Co. 4½ per cent bonds due June 1st, 1910. $1,750,000, which were exchanged with J. P. Morgan & Co. for new 4 per cent bonds at 97.68 of a par value of	1,791,000
	6,287,000

812 *Extract from the minutes of a meeting of the directors of the Lehigh & Wilkes-Barre Coal Co., held June 9, 1910.*

For information of the board, the president stated that, under authority previously granted, the consolidated mortgage to secure $20,000,000 4 per cent bonds had been executed and filed with the Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee of the mortgage, and that all the bonds ($20,000,000) have been signed by the officers of the company and delivered to said trustee for authentication, and out of the same there have been sold $12,500,000 to J. P. Morgan & Company, i. e., at par value, subject to a commission of 2 per cent, and that out of the remainder, $7,500,000, there will be delivered to the Central Railroad Company of New Jersey $4,496,000, which, with $325,000 in cash, which has been paid, will extinguish the 5 per cent gold bonds of a par value $4,821,000, which matured on June 1st, 1910. This will leave in the hands of the trustee $3,004,000; that is, $2,691,000 reserved to take up the 5 per cent bonds due November 1st, 1912, and $313,000 for future development and equipment of the property.

Extract from the minutes of a meeting of directors of Lehigh & Wilkes-Barre Coal Co., held February 20, 1902.

Resolved, That the principal office of this company from and after the first day of May, 1902, shall be located in the Reading Terminal,
813 Philadelphia; and that the president is authorized to do whatever in his judgment is necessary to do to carry this provision into effect.

Extract from the minutes of a meeting of the directors of the Lehigh & Wilkes-Barre Coal Co., held May 19, 1913.

The president advised that he had purchased for the company the total capital stock of the Parrish Coal Company, paying therefor $675,000 cash, which action was, on motion, ratified, approved, and confirmed.

Counsel for the Government also offered in evidence statement furnished by Mr. Heebner in regard to certain leases, as follows:

Statement of leases now in force made by the Philadelphia and Reading Coal & Iron Company which require the lessees to ship coal mined by them on company's lands over the lines of the Philadelphia & Reading Railway Company. 814

FEBRUARY, 1914.

Lessee.	Date of lease.	Expires.	Premises.	Coal acres leased.
Gorman & Campion	Feb. 1, 1903	At will	Tamaqua estate	6
Do	July 1, 1908	At will	Baber & Guiterman, Schuylkill Township, Schuylkill County.	205
Saint Clair Coal Co	June 1, 1898	May 31, 1917	Valley Furnace, Lee & St. Clair tract, boro. of St. Clair and New Castle Township.	658
Bloomingdale Valley Coal Co.	July 2, 1906	At will	Valley Furnace, Blythe Twp., Schuylkill County.	27
Mt. Hope Coal Co	Feb. 1, 1896	At will	Lee Lands & Saw Mill, St. Clair boro.	63
Richard White	July 1, 1896	At will	Ellmaker & Flowery field tracts, New Castle Twp., Schuylkill County.	64
Oak Hill Coal Co	Aug. 1, 1904	Dec. 21, 1923	Oak Hill & Diamond tracts, Cass Twp., Schuylkill County.	102
Lytle Coal Co	July 24, 1894	Apr. 1, 1914	Part of Manhattan lands in Cass Twp., Schuylkill Co.	134
Do	July 24, 1894	Perpetual	Lytle 1-3 interest and two parcels of the Phoenix Parklands, Cass, Twp., Schuylkill Co.	199
Albright Coal Co	Feb. 28, 1895	Coal exhausted.	Manhattan, Salem & Hughes, Langton, Branch Township, Schuylkill County.	97
Pine Hill Coal Co	Apr. 1, 1899	Mar. 31, 1914	Manhattan lands, Cass Township, Schuylkill County.	205
Buck Run Coal Co	June 1, 1901	Coal exhausted.	Manhattan & Reed, Cass Township, Schuylkill County.	204
John H. Davis	Jan. 1, 1894	At will	Gettle & Wagner, New Castle Twp., Schuylkill County.	77
Whims & Shortall	Feb. 1, 1896	At will	Gettle & Wagner & J. Laing, New Castle Township, Schuylkill County.	46
East Ridge Coal Co	July 18, 1899	Coal exhausted.	Gettle & Wagner, Cass Township, Schuylkill County.	7
Excelsior Coal Co	June 1, 1907	At will	Brady tract, Coal Township, Northumberland County.	233
Dodson Coal Co	Aug. 1, 1893	Dec. 31, 1917	Ely & Rieble tracts, Mahanoy & W. Mahanoy Twp., Schuylkill County.	148
Enterprise Coal Co	Mar. 1, 1902	Feb. 28, 1917	McIntyre lands, Mt. Carmel Twp., Northumberland County.	290
Buck Ridge Coal Co	Dec. 2, 1912	At will	Brady tract, Coal Township, Northumberland County.	9
W. W. Scott	Jan. 1, 1910	At will	Manhattan lands, Cass Twp., Schuylkill County.	16
Schuylkill Lehigh Coal Co.	Apr. 18, 1911	Mar. 31, 1941	Valley Furnace, Schuylkill Twp., Schuylkill County.	17
Total acreage				2,807
Lease to Dodson Coal Co.	Requires shipment of all coal mined from lands leased to it and an equal quantity of coal mined by it from lands of others shipped over lines of the Philadelphia & Reading Railway Company. See copy of covenants of lease relating thereto.			

PHILADELPHIA, *February 26, 1914.*

815 *Statement of leases now in force made by the Fulton Coal Company which requires the lessees to ship coal mined by them over the lines of the Philadelphia and Reading Railway Company.*

Lessee.	Date of lease.	Expires.	Premises.	Coal acres leased.
Excelsior Coal Co.	June 1, 1907	At will.	Fulton Coal Co.	70
Enterprise Coal Co.	Mar. 1, 1902	Feb. 28, 1917	Fulton Coal Co.	45
Total acreage.				1,15

PHILADELPHIA, *February 26th, 1914.*

Statement of leases now in force made by the Philadelphia and Reading Coal and Iron Company which do not require the lessees to ship coal mined by them on company's lands over the lines of the Philadelphia & Reading Railway Co.

FEBRUARY, 1914.

Lessee.	Date of lease.	Expires.	Premises.	Coal acres leased.
Lehigh Valley Coal Co.	Dec. 1, 1901	Coal exhausted.	Mt. Car. Coal & I. Co., Mt. Carmel Boro., Northumberland Co.	50
Lehigh Valley Coal Co.	Jan. 1, 1892	Perpetual.	Manhattan & Swatara lands, Reilly Township, Schuylkill Co.	274
Summit Branch Mining Co.	June 1, 1897		Munson & Williams lands, Porter Township, Schuylkill Co.	6
T. D. Bergen.	Dec. 1, 1913	At will.	Wetherill, Gray & Cleaver tracts, Coal Township, Northumberland Co.	3
Alliance Coal Mining Co.	Nov. 1, 1913	Perpetual.	Wood & Abbott, Blythe Township, Schuylkill Co.	50
Total acreage.				383

PHILADELPHIA, *February 26th, 1914.*

*794 Counsel for the Government also offer in evidence a statement of tonnage of anthracite coal mined by individual operators under lease from lands of the Philadelphia & Reading Coal and Iron Company, etc., as follows:

*795 *Tonnage of anthracite coal mined by individual operators under lease from lands of the Philadelphia & Reading Coal & Iron Company, of the Fulton Coal Company, of the Delaware Coal Company, and from lands leased to the Philadelphia & Reading Coal & Iron Company, during the years ended December 31, 1909, 1910, 1911, 1912, and 1913.*

Name.	1909	1910	1911	1912	1913	Total.
From lands owned by the Philadelphia & Reading Coal & Iron Company.						
John H. Davis	26,699.14	34,267.06	31,904.13	26,922.12	28,159.00	146,953.05
Butcher Creek Coal Co.	21,464.09	11,161.16	19,062.11	14,135.17	12,600.02	78,424.15
Chas. Geisweit	333.14	210.10	207.02	163.10	270.18	1,185.14
Mt. Hope Coal Co.	57,913.01	59,427.08	60,223.02	43,043.12	30,373.12	250,980.15
A. A. Raabe	910.10	717.10	777.00	189.00		2,594.00
Excelsior Coal Co.	91,296.13	70,242.01	71,918.15	77,779.00	103,482.06	414,718.15
Dreshman Bros.	2,155.00	1,692.05	1,552.15	570.15		5,970.15
J. A. Lawrence, "W. W. Scott"	3,263.05	3,176.10	1,764.04	3,020.04	4,297.13	15,521.16
Oak Hill Coal Co.	16,569.10	20,800.04	23,015.04	16,513.02	33,842.03	110,740.03

*So numbered in original.

Tonnage of anthracite coal mined by individual operators under lease from lands of the Philadelphia & Reading Coal & Iron Company, etc.—Continued.

Name.	1909	1910	1911	1912	1913	Total.
From lands owned by the Philadelphia & Reading Coal & Iron Company—Contd.						
Lehigh Valley Coal Co.	32,383.19	162,665.11	181,977.15	123,972.11	90,393.16	593,393.12
J. H. Denning	335.15					335.15
Dodson Coal Co.	112,797.10	122,654.11	108,613.12	48,271.18	90,247.10	482,585.01
Gorman & Campion	9,217.10	8,908.17	16,651.05	13,898.10	21,368.08	70,044.10
Lytle Coal Co.	49,909.09	69,411.14	72,231.06	73,034.14	88,785.00	353,372.03
Richard White	200.01	2,611.08	6,516.02	9,607.13	16,030.09	34,965.13
Beddow & Mc-Cready	987.06	570.00				1,557.06
Wm. Cooke	4,105.17	7,093.12	4,969.18			16,979.07
Pine Hill Coal Co.	102,277.01	116,154.00	101,273.07	97,988.19	108,367.16	526,061.03
Furnace Coal Co.	11,434.02	6,669.02	1,056.15			19,799.19
Phillips Coal Co.	8,231.00	2,959.00	2,349.10	385.00		13,924.10
Lorberry Coal Co.	6,986.05					6,986.05
Buck Run Coal Co.	86,434.00	133,592.11	114,647.16	125,320.05	117,480.03	577,474.15
Big Creek Coal Co.	47,492.11	3,720.10				51,213.01
Cambridge Coal Co.		7,906.15	45,311.11	58,379.06	69,961.04	181,588.06
Enterprise Coal Co.	48,133.18	138,153.06	157,945.00	127,097.00	63,570.00	534,899.04
St. Clair Coal Co.	204,469.17	246,468.12	210,940.06	201,133.15	180,724.08	1,033,735.18
Schuylkill Lehigh Coal Co.			1,712.06	26,279.17	10,422.15	38,414.18
Summitt Branch Mining Co.			222.05	1,608.13		1,831.02
Back Ridge Coal Mining Co.				387.04	13,898.06	14,285.10
Maryd Coal Co.					7,109.15	7,109.15
Total	996,011.17	1,251,134.19	1,239,443.08	1,089,701.03	1,091,384.04	5,047,677.11
From lands owned by Fulton Coal Company.						
Excelsior Coal Co.	143,524.00	167,402.19	178,700.05	151,447.10	98,494.10	741,629.10
Enterprise Coal Co.	33,961.10	37,120.05	47,979.07	55,869.06	73,732.06	248,602.14
Total	167,485.10	204,523.04	226,679.12	209,317.02	172,227.05	980,232.11
From lands owned by Delaware Coal Company.						
Small operators	842.00	864.10	581.00	932.00	768.00	3,987.10
From lands leased to the Philadelphia & Reading Coal & Iron Company.						
Cambridge Coal Co.	27,028.14	13,308.06	6,811.18	5,744.14	2,775.17	55,669.09
Furnace Coal Co.	26,456.10	29,809.14	18,369.08			74,635.12
Brookwood Coal Co	993.02	237.12				1,230.14
Harleigh Brookwood Coal Co.			274.16	1,745.09	7,209.15	9,230.00
Mt. Hope Coal Co.	19,304.07	19,809.13	20,077.14	14,348.13	10,124.10	83,664.17
J. H. Denning	795.03					795.03
Richard White	473.17	6,184.16	15,432.15	25,035.15	27,604.15	72,731.18
St. Clair Coal Co.	70,161.12	72,717.07	70,333.09	67,044.18	60,240.19	340,478.05
Total	145,213.05	142,067.08	131,280.00	111,919.09	107,955.16	638,435.18
Grand total	1,309,552.12	1,578,590.01	1,597,984.00	1,411,871.14	1,372,335.05	7,270,333.12

PHILADELPHIA, *February 20, 1914.*

816 Counsel for the Government also offered a typical form of lease by the Philadelphia & Reading Coal & Iron Company, furnished from the same source, counsel for the Government (Mr. Kingsbury) stating that he desires to read therefrom the third covenant only, as follows:

Third. To ship in each year during the term hereby created all the coal mined and shipped from the demised premises in the cars of the Philadelphia & Reading Railroad Company, or in cars that reach their destination exclusively by the railroads owned, leased, or controlled by the said Philadelphia & Reading Railroad Company.

Counsel for the Government also offered certain extracts from the lease dated August 1 1893, from the Philadelphia & Reading Coal & Iron Company to Dodson Coal Company relating to shipments over lines of Philadelphia & Reading Railroad Company.

Seventh. To ship over the railroads leased, owned, or controlled by the Philadelphia and Reading Railroad Company, or over such railroad or railroads as may be designated by the party of the first part hereto all coal mined and shipped from the premises hereby demised; and also to mine and ship over the same railroads from
817 the adjoining tracts upon which the said Lessees are now operating in each year, an amount of coal equal in quantity and sizes to the amount in such year mined and shipped from the premises hereby demised, which amount from said adjoining tract shall not be less, in any one year, than forty thousand tons excluding sizes below buckwheat.

And if, during any one year as aforesaid, said Lessees shall neglect, refuse, or fail to ship over the said railroads, from the said adjoining tracts an amount of coal equal as aforesaid to the amount mined and shipped as aforesaid in such year from the premises hereby demised, then, and in every such case, the Lessees hereby agree that they will, on the twentieth day of August next succeeding the expiration of said year, pay in cash as an additional rental for the premises hereby demised a sum of money equal to fifty cents a ton upon the number of tons of the deficiency in either case.

And if in either of the two years next succeeding the year in which such deficiency shall have occurred, the party of the second part shall have shipped from the said adjoining lands a quantity in excess of the shipment during that year from the demised premises, and in such year shall have kept its covenants herein contained in respect of the minimum annual shipment of forty thousand tons of coal from said adjoining premises, then the said party of the second part shall
818 be entitled to a return of or credit for an amount of money equal to fifty cents per ton on the tonnage shipped in that year from the said adjoining premises in excess of the amount required by this contract to be shipped therefrom in that year. But if the quantity shipped from the adjoining premises shall, for any year during the term hereby created, be in excess of the amount shipped during the same year from the demised premises, and if no deficiency shall have occurred previously, and if the provisions in regard to the minimum annual shipment of forty thousand tons shall have been observed, then the party of the second part shall have a credit for this excess shipment which shall be applicable, so far as it may go, to cancel the obligation

to pay the stipulated additional rental on account of any deficiency that may thereafter occur. But no liability on the part of the party of the first part to pay any money to the party of the second part shall accrue in case, at the end of the term hereby created, the total tonnage shipped from the said adjoining lands over the roads to be designated as aforesaid by the party of the first part, shall be greater than the total tonnage so shipped from the demised premises.

It being expressly understood, however, that in case the said Lessee shall in any year be prevented or restricted from shipping any part of the above-specified minimum of forty thousand tons by reason of the exhaustion of either of the tracts of land hereby demised or adjoining the same and operated by them, by the inadequate supply 819
of cars furnished by the railroad company designated by the party of the first part to furnish the same, by prolonged strike of the workmen, by fire or flood in the mines, by destruction of the breaker, or by any other unavoidable causes beyond the control of the said Lessee, the said Lessee shall be relieved from the obligation to pay such proportionate part of the said additional rental as the amount they have been prevented or restricted from shipping by the above-named causes shall bear to the total amount of the deficiency.

Mr. KINGSBURY. I also read in evidence certain extracts from the annual report for 1912 of the Lehigh Coal & Navigation Company, as follows:

(Page 13:) "Reference was made in the last annual report to the extension of the Lehigh & New England Railroad from Danielsville, Pa., to Tamaqua, Pa. (at which point connection is made with the Panther Creek Railroad of your company). This extension, some 32 miles in length, was completed and put in operation on July 8, 1912. The new line, in addition to proving a source of increased revenue to the Lehigh & New England Railroad Company, affords a direct all-rail route to the eastern markets as well as a physical connection with the main trunk lines.

"The financial requirements of the Lehigh & New England Railroad Company and the Lehigh Navigation Electric Company in carrying on the work as above outlined have been provided for by the 820
purchase of their securities and by advances by this company amounting during the year to $1,754,765.67.

"It will be noted that there is an increase of $163,196.49 in miscellaneous revenue, which is mainly accounted for by the proceeds of the sale of the collateral trust power bonds being placed at advantageous rates of interest pending the need of the money for construction purposes. Another large item making up this increase was the initial dividend of 4 per cent received on 5,079 shares of capital stock of the Lehigh & Hudson River Railway Company held by your company."

Counsel for the Government also read in evidence, from the answer of the Central Railroad of New Jersey in the Interstate Commerce Commission docket No. 4914, the list of the fifty largest stockholders, as follows:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

(Docket No. 4914.)

Answer to question No. 1.

Information in form next following concerning fifty (50) largest holders in the aggregate of voting securities at date of last closing of stock books (i. e., prior to June 30th, 1912). (Note.—The respondent has no preferred stock and only the common stock has voting rights.)

821

Names and addresses.	Votes.	Par value of common stock held.
The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under Jersey Central collateral trust deed of Reading Company, dated April 1, 1901, care of Reading Co., Philadelphia, Pa.	145,000	$14,500,000
Fahnestock & Co., 2 Wall St., New York City	11,920	1,192,000
Baker, Geo. F., 2 Wall St., New York City	8,000	800,000
Winslow, Lanier & Co., 59 Cedar St., New York City	6,400	640,000
Graves, Jr., Henry, 111 Broadway, New York City	5,225	522,500
Garland, est. of Jas. A.	4,800	480,000
Graves, est. of Henry, 111 Broadway, New York City	4,400	440,000
Pulitzer, Joseph, c/o/e of American Exchange Natl. Bank, 128 Broadway, New York City	4,000	400,000
Widener, P. A. B., Land Title Bldg., Philadelphia, Pa.	3,200	320,000
Fidelity-Phenix Fire Insurance Co., P. O. box No. 1010, New York City	2,900	290,000
822 Maxwell, est. of Henry W., 30 Broad St., New York City	2,825	282,500
Jones, Benj. W., 77 Beekman St., New York City	2,740	274,000
Fahnestock, H. C., 2 Wall St., New York City	2,400	240,000
Bourne, Frederick G., 149 Broadway, New York City	2,300	230,000
Hopkins, Ferdinand T., 37 Gt. Jones St., New York City	2,075	207,500
Globe-Rutgers Fire Insurance Co., 76 William St., New York City	1,600	160,000
Whitney & Sons, H. N., 17 Broad St., New York City	1,575	157,500
Emery, Chas. G., 320 Fifth Ave., New York City	1,500	150,000
Niagara Fire Insurance Co., 46 Cedar St., New York City	1,500	150,000
Pratt & Co., Charles, 26 Broadway, New York City	1,500	150,000
Shepherd, G., Sidney, New Haven, Conn.	1,500	150,000
Maxwell, est. of J. R., 30 Broad St., New York City	1,289	128,900
823 Dunham, est. of Geo. H., 19 West 81st St., New York City	1,200	120,000
Sanford, Stephen, Amsterdam, N. Y.	1,200	120,000
Vail, est. of Stephen, Morristown, N. J.	1,083	108,300
Graves, Edward H., 111 Broadway, New York City	1,047	104,700
Converse, E. C., P. O. box No. 731, New York City	1,000	100,000
Continental Insurance Company, P. O. box No. 2038, New York City	1,000	100,000
Graves, George Coe, 111 Broadway, New York City	1,000	100,000
Lipman, Chas. K., 165 Broadway, New York City	1,000	100,000
Thomas, E. E., 23 Wall St., New York City	1,000	100,000
Tinker, Henry G., 139 Broadway, New York City	1,000	100,000
White, W. A. & A. M., 5 Nassau St., New York City	1,000	100,000
824 Baer, Geo. F., Reading Terminal, Philadelphia, Pa.	830	83,000
Allen, T. F., 165 Broadway, New York City	800	80,000
Bohn, Frederick, Co., 45 Wall St., New York City	800	80,000
Watson, James S., 11 Prince St., Rochester, N. Y.	660	66,000
Dodd, est. of John M., 29 Broadway, New York City	612	61,200
Maxwell, jr., J. R., 1421 Chestnut St., Philadelphia, Pa.	600	60,000
Bowdoin, Geo. S., 23 Wall St., New York City	500	50,000
Goetchius, est. of John M., 52 W. 58th St., New York City	500	50,000
Hawley, Sarah H., P. O. box No. 112, Newtown, Conn.	500	50,000
Hencken, Hancke, 8 West 121st St., New York City	500	50,000
Home Insurance Company, 56 Cedar St., New York City	500	50,000
825 Terry, John T., 100 Broadway, New York City	500	50,000
Benedict, Drysdale & Co., 7 Wall St., New York City	490	49,000
Hollister, Elizabeth C. W., 75 East Ave., Rochester, N. Y.	480	48,000
de Forest, Robert W., 30 Broad St., New York City	470	47,000
Farren, Bernard N., 1807 Spring Garden St., Phila., Pa.	400	40,000
Garland, Charles T., care of Kidder, Peabody & Co., 56 Wall St., New York City	400	40,000

Counsel for the Government also offered in evidence the following statement, furnished by Mr. Drinker:

THE LEHIGH COAL & NAVIGATION CO.

Shipments from Nesquehoning colliery, years 1911, 1912, 1913.

	To storage plant, Hauto.	To Coal-port for canal.	Via rail.	Total.
1911	19,961.11	85,334.11	675,602.09	780,898.11
1912		91,342.09	531,313.06	622,655.15
1913	10,484.00	98,796.03	643,690.09	752,971.11
Total	30,446.10	275,473.03	1,850,606.04	2,156,525.17

(Adjourned until Monday, March 9, 1914, at 11 a. m.)

Met pursuant to adjournment at No. 2 Rector Street, New York City, Monday, March 9, 1914, at 11 o'clock a. m. 826

Present: The Examiner; Messrs. Coudert, Kingsbury, and Gordon, special assistants to the Attorney General, for the Government; Jackson E. Reynolds, Esq., for the defendants.

Mr. Kingsbury states that he has sent the map, being the first exhibit introduced by the Government, back to the draftsman for correction and has not yet received it, and reserves the right to put it in when received.

Mr. Kingsbury read in evidence, subject to correction, a tabulated statement of the directors and officers of the Reading Companies since the reorganization, prepared from the printed annual reports of the companies, as follows:

827

READING COMPANY.

June 30, 1898 (first annual report, from December 1, 1896, to June 30, 1898).

Officers.—President, Jos. S. Harris; secretary, W. G. Brown; treasurer, W. A. Church.

Directors.—Jos. S. Harris, A. J. Antelo, Charles H. Coster, Geo. F. Baer, George C. Thomas, Henry A. Dupont, Henry P. McKean, Samuel Dickson, John Lowber Welsh.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1898 (first annual report, from December 1, 1896, to June 30, 1898).

Officers.—President, Jos. S. Harris; secretary, W. R. Taylor; treasurer, W. A. Church.

Directors.—Geo. F. Baer, Charles H. Coster, John Lowber Welsh, Geo. C. Thomas, Henry A. Dupont, Henry P. McKean.

828 PHILADELPHIA & READING COAL & IRON CO.

June 30, 1898 (first annual report, from December 1, 1896, to June 30, 1898).

Officers.—President, Jos. S. Harris; secretary, W. G. Brown; treasurer, W. A. Church.
Directors.—John Lowber Welsh, Charles H. Coster, George F. Baer, Thomas McKean, jr., George C. Thomas, A. J. Antelo.

READING COMPANY.

(All these data are obtained from Reading Co.'s annual reports, as each year's report includes all three companies.)

June 30, 1899 (second annual report).

Officers.—President, Jos. S. Harris; secretary, W. G. Brown; treasurer, W. A. Church. (Same as 1898.)
Directors.—Jos. S. Harris, A. J. Antelo, Charles H. Coster, George F. Baer, George C. Thomas, Henry A. Dupont, Henry B. McKean, Samuel Dickson, John Lowber Welsh. (Same as 1898.)

829 PHILADELPHIA & READING RAILWAY CO.

June 30, 1899 (second annual report).

Officers.—President, Jos. S. Harris; secretary, W. R. Taylor; treasurer, W. A. Church. (Same as 1898.)
Directors.—Geo. F. Baer, Charles H. Coster, John Lowber Welsh, George C. Thomas, Henry A. Dupont, Henry P. McKean. (Same as 1898.)

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1899 (second annual report).

Officers.—President, Jos. S. Harris; secretary, W. G. Brown; treasurer, W. A. Church. (Same as 1898.)
Directors.—John Lowber Welsh, Charles H. Coster, George F. Baer, Thomas McKean, jr., George C. Thomas, A. J. Antelo. (Same as 1898.)

830 READING COMPANY.

June 30, 1900 (third annual report).

Officers.—Same as 1899.
Directors.—Same, except Charles Steele took Coster's place.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1900 (third annual report).

Officers.—Same as 1899.
Directors.—Same, except Charles Steele took Coster's place.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1900 (third annual report).

Officers.—Same as 1899.
Directors.—Same, except Charles Steele took Coster's place.

READING COMPANY. 831

June 30, 1901 (fourth annual report).

Officers.—President, Geo. F. Baer (director); vice president, W. R. Taylor (secretary of railway company); secretary, A. H. Moore; treasurer, W. A. Church (same).
Directors.—Same as 1900, including Harris, ex-president.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1901 (fourth annual report).

Officers.—President, Geo. F. Baer (new); secretary, W. R. Taylor (same); treasurer, W. A. Church (same).
Directors.—Same, except Harris took Baer's place, and vice versa.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1901 (fourth annual report).

Officers.—President, G. F. Baer (new); secretary, W. G. Brown (same); treasurer, W. A. Church (same).
Directors.—Same, except Harris took Baer's place, and vice versa.

READING COMPANY. 832

June 30, 1902 (fifth annual report).

Officers.—President, G. F. Baer (same); vice president, W. R. Taylor (same); secretary, W. R. Taylor (new); treasurer, W. A. Church (same).
Directors.—Same as 1901.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1902 (fifth annual report).

Officers.—Same as 1901.
Directors.—Same as 1901.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1902 (fifth annual report).

Officers.—Same as 1901.
Directors.—Same as 1901.

READING COMPANY.

June 30, 1903 (sixth annual report).

Officers.—Same as 1902.
Directors.—Same as 1902, except H. McK. Twombly took Antelo's place.

833 PHILADELPHIA & READING RAILWAY CO.

June 30, 1903 (sixth annual report).

Officers.—Same as 1902, except new first vice president, Theodore Voorhees, and new second vice president, C. E. Henderson.
Directors.—Same as 1902.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1903 (sixth annual report).

Officers.—Same as 1902, except new first vice president, C. E. Henderson, and new second vice president, R. C. Luther.
Directors.—Same as 1902, except H. McK. Twombly took Antelo's place.

READING COMPANY.

June 30, 1904 (seventh annual report).

Officers.—Same as 1903, except treasurer, Richard Tull, vice W. A. Church.
Directors.—Same as 1903, except Edward T. Stotesbury, vice George C. Thomas.

834 PHILADELPHIA & READING RAILWAY CO.

June 30, 1904 (seventh annual report).

Officers.—Same as 1903, except treasurer, Tull vice Church.
Directors.—Same as 1903, except Edward T. Stotesbury vice Geo. C. Thomas.

PHILADELPHIA & READING COAL & IRON CO.

June 30, 1904 (seventh annual report).

Officers.—Same as 1903, except treasurer, Tull vice Church.
Directors.—Same as 1903, except Edward T. Stotesbury vice G. C. Thomas.
(Note.—Notice same changes in all three companies.)

READING COMPANY.

June 30, 1905 (eighth annual report).

Officers.—Same as 1904.
Directors.—Same as 1904, except Henry C. Frick vice J. L. Welsh, deceased.

835 PHILADELPHIA & READING RAILWAY CO.

June 30, 1905 (eighth annual report).

Officers.—Same as 1904.
Directors.—Same as 1904, except H. McK. Twombly vice Henry P. McKean, and Henry C. Frick vice J. L. Welsh, deceased.

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1905 (eighth annual report).

Officers.—Same as 1904, except Second Vice President Thomas M. Richards vice R. C. Luther.
Directors.—Same as 1904, except Henry C. Frick vice J. L. Welsh, deceased.

READING COMPANY.

June 30, 1906 (ninth annual report).

Officers.—Same as 1905.
Directors.—Same as 1905.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1906 (ninth annual report).

Officers.—Same as 1905.
Directors.—Same as 1905.

836

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1906 (ninth annual report).

Officers.—Same as 1905, except First Vice President Thomas M. Richards vice C. E. Henderson and Second Vice President W. J. Richards (and general manager) vice Thomas M. Richards.
Directors.—Same as 1905.

READING COMPANY.

June 30, 1907 (tenth annual report).

Officers.—Same as 1905–6.
Directors.—Same as 1905–6.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1907 (tenth annual report).

Officers.—Same as 1905–6.
Directors.—Same as 1905–6.

837

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1907 (tenth annual report).

Officers.—Same as 1906.
Directors.—Same as 1905–6.

READING COMPANY.

June 30, 1908 (eleventh annual report).

Officers.—Same as 1905–6, except Treasurer Harry E. Paisley vice Richard Tull.

Directors.—Same as 1905–6, except Oscar G. Murray vice Charles Steele.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1908 (eleventh annual report).

Officers.—Same as 1905–7, except Second Vice President Henderson's position omitted and Treasurer Harry E. Paisley vice Richard Tull.

Directors.—Same as 1905–7, except Oscar G. Murray vice Charles Steele.

838 PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1908 (eleventh annual report).

Officers.—Same as 1907, except Treasurer Harry E. Paisley, vice Richard Tull.

Directors.—Same as 1905–7, except Oscar G. Murray, vice Charles Steele.

(Note identical changes.)

READING COMPANY.

June 30, 1909 (twelfth annual report).

Officers.—Same as 1908.

Directors.—Same as 1908.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1909 (twelfth annual report).

Officers.—Same as 1908.

Directors.—Same as 1908.

839 PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1909 (twelfth annual report).

Officers.—Same as 1908, except First Vice President Thomas M. Richards died, and W. J. Richards, second vice president, made sole vice president.

Directors.—Same as 1908.

READING COMPANY.

June 30, 1910 (thirteenth annual report).

Officers.—Same as 1908–9.

Directors.—Same as 1908–9, except George F. Baker and Peter A. B. Widener vice Jos. S. Harris and H. McK. Twombly.

PHILADELPHIA & READING RAILWAY CO. 840

June 30, 1910 (thirteenth annual report).

Officers.—Same as 1908–9.
Directors.—Same as 1908–9, except Geo. F. Baker and Peter A. B. Widener vice Harris and Twombly.

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1910 (thirteenth annual report).

Officers.—Same as 1909, except First Vice President W. J. Richards also entitled general manager.
Directors.—Same as 1908–9, except Geo. F. Baker and Peter A. B. Widener vice Jos. S. Harris and H. McK. Twombly.
(Note identical changes in all three companies' directors.)

READING COMPANY. 841

June 30, 1911 (fourteenth annual report).

Officers.—Same as 1908–10.
Directors.—Same as 1910.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1911 (fourteenth annual report).

Officers.—Same as 1908–10.
Directors.—Same as 1910.

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1911 (fourteenth annual report).

Officers.—Same as 1910.
Directors.—Same as 1910.

READING COMPANY.

June 30, 1912 (fifteenth annual report).

Officers.—Same as 1908–11.
Directors.—Same as 1910–11, except Daniel Willard vice Oscar G. Murray.

PHILADELPHIA & READING RAILWAY CO.

June 30, 1912 (fifteenth annual report).

Officers.—Same as 1908–11.
Directors.—Same as 1910–11, except Daniel Willard vice Oscar G. Murray.

PHILADELPHIA & READING COAL AND IRON CO.

June 30, 1912 (fifteenth annual report).

Officers.—Same as 1910–11.
Directors.—Same as 1910–11, except Daniel Willard vice Oscar G. Murray.
(Note identical changes again.)

842 Mr. Kingsbury also read in evidence a tabulated statement of the officers and directors of the Central Railroad Company of New Jersey, from 1887 to date, prepared from the printed annual reports of the company, as follows:

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

December 31, 1887.

John S. Kennedy, Joseph S. Harris, receivers.

December 31, 1888.

President, J. Rogers Maxwell; vice president, Jos. S. Harris; secretary, Samuel Knox; treasurer, J. W. Watson.
Directors.—Austin Corbin, H. C. Fahnestock, Jas. A. Garland, Edward D. Adams, Charles Lanier, J. Rogers Maxwell (president), George F. Baker, Henry Graves, Henry W. Maxwell.

December 31, 1889.

Same officers and directors.

December 31, 1890.

Same officers and directors.

December 31, 1891.

Same officers and directors.

December 31, 1892.

843 Same officers and directors, except Samuel Sloan, director, in place of Austin Corbin.

December 31, 1893.

Same as 1892.

December 31, 1894.

Same as 1892.

December 31, 1895.

Same as 1892.

December 31, 1896.

Same as 1892, except Frederick G. Bourne elected director in place of Edward D. Adams.

December 31, 1897.

President, J. R. Maxwell; first vice president, G. F. Baker; second vice president, S. M. Williams; treasurer, J. W. Watson; secretary, Samuel Knox.

Directors.—Same as 1896.

December 31, 1898.

Same officers and directors as 1897.

December 31, 1899.

Officers.—President, J. R. Maxwell; chairman executive committee, G. F. Baker; first vice president, C. H. Warren (former assistant to president); second vice president and comptroller, S. M. Williams; treasurer, J. W. Watson; secretary, Samuel Knox. 844

Same directors.

December 31, 1900.

Not stated.

December 31, 1901.

Officers.—President, Geo. F. Baer; chairman executive committee, J. R. Maxwell; vice president, Chas. H. Warren: secretary and treasurer, G. O. Waterman.

Directors.—G. F. Baer, J. R. Maxwell, G. F. Baker, H. C. Fahnestock, Eben B. Thomas, J. Lowber Welsh, Henry Graves, Jos. S. Harris, Chas. Steele.

CENTRAL RAILROAD COMPANY OF NEW JERSEY. 845

For fiscal year ending June 30, 1903.

(Change of fiscal year covers 18 months. Reports hereafter for fiscal year ending June 30.)

Same directors.

Same officers, except Vice President Warren out and Vice President and General Counsel Robert W. De Forest and Vice President and General Manager W. G. Besler elected.

June 30, 1904.

Same directors.

Same officers as June 30, 1903.

June 30, 1905.

Same directors, except H. McK. Twombly took place of J. L. Welsh, deceased.

Same officers.

June 30, 1906.

Same officers as 1905.

Same directors as 1905.

June 30, 1907.

Same officers.

Same directors, except Robert W. De Forest took Henry Grave's place.

June 30, 1908.

Same directors as 1907.
846 Same officers as 1907.

June 30, 1909.

Same officers.
Directors not stated.

June 30, 1910.

Same officers.
Same directors, except Hy. Graves, jr., took Twombly's (deceased) place, and E. T. Stotesbury took Harris's (deceased) place.

June 30, 1911.

Same officers, except G. F. Baker took J. R. Maxwell's (deceased) place as chairman executive committee.
Same directors, except Howard W. Maxwell took J. R. Maxwell's (deceased) place.

June 30, 1912.

Same officers and directors as 1911. No change.

Mr. Kingsbury also read in evidence the following tabulated statement of the officers and directors of the Lehigh and Wilkes-Barre Coal Co., prepared from its annual reports from 1901 to date, except the years 1903–1908:

LEHIGH & WILKES-BARRE COAL CO.

(Reports for 1901–1903 included with Central R. R. of New Jersey.)

December 31, 1901.

847 *Directors.*—G. F. Baer, J. R. Maxwell, G. F. Baker, Jos. S. Harris, Samuel Dickson, Andrew H. McClintock, Calvin Pardee.
Officers.—President, G. F. Baer; vice president, C. H. Warren; secretary and treasurer, G. O. Waterman.
(Note.—Identical with Central R. R. of New Jersey for 1901.)

June 30, 1903.

Same directors, except J. L. Welsh, elected in place of Pardee.
Same officers, except vice president's office abolished.

June 30, 1908.

Same directors, except H. McK. Twombly took Welsh's place in both railroad and this company in 1905.
Same officers, viz: President, G. F. Baer; secretary and treasurer, G. O. Waterman.

June 30, 1909.

848 Same directors.
Same officers, and new office of vice president and general manager created and filled by C. F. Huber.

June 30, 1910.

Same directors, except E. T. Stotesbury succeeded Jos. S. Harris, deceased, and Charlemagne Tower, jr., succeeded H. McK. Twombly, deceased. (Same as in Central R. R. of N. J.)
Same officers as 1909, except Percival B. Heilner made additional vice president and general manager.

June 30, 1911.

Same directors, except J. R. Maxwell died; no successor named.
Same officers as 1910.

June 30, 1912.

Same directors, except Thomas A. Wright added.
Same officers.

At the request of Mr. Kingsbury, Mr. Reynolds later furnished to the examiner the following statement covering the years 1903–1908, inclusive:

As to the directors, the following served continuously in the above period: George F. Baer, George F. Baker, Joseph S. Harris, Samuel 848½
Dickson, Andrew McClintock.
There was one change, as follows:
J. Lowber Welsh was a director on June 30, 1903; died August 22, 1904.
H. McK. Twombly was elected director at annual meeting of stockholders on September 22, 1904, and continued as such for remainder of period.
There was practically no change in the officers, except that Mr. C. F. Huber became general superintendent in 1903 and was promoted to the vice president and general manager's position after June 30, 1908. During this interval also Mr. P. B. Heilner was promoted from general sales agent to the position of vice president and general agent.

Mr. Kingsbury also read in evidence the following statement of the directors and officers of the Lehigh Coal and Navigation Co. from 1871 to date, prepared from its printed annual reports:

LEHIGH COAL & NAVIGATION CO. 849

Report of May, 1871.

President, E. W. Clark.
Managers.—Francis R. Cope, Francis C. Yarnall, Fisher Hazard, Charles Parrish, George F. Tyler, Philip C. Garrett, Charles Wheeler, George Whitney, Alexander Biddle, John Leisenring, Samuel Thomas.
Pres. asst. and comptroller, Mendes Cohen; treasurer, Solomon Shepherd; secretary, F. Mitchell.

May, 1872.

Same managers.
Same officers, except pres. asst., etc., was discontinued.

May, 1873.

Same as 1872.

February, 1874.

Same as 1872.

February, 1875.

850 *Officers.*—President, E. W. Clark; secretary and treasurer, Solomon Shepherd.

Same managers, except James M. Willcox took Tyler's place.

February, 1876.

Same officers as 1875.

Same managers as 1875, except T. Charlton Henry took Garrett's place and Edward Lewis took Thomas's place.

February, 1877.

Same officers as 1876.

Same managers as 1876.

February, 1878.

Same officers as 1877.

Same managers as 1877, except John Brown took Alex. Biddle's place.

February, 1879.

Same officers continued.

Samuel Dickson took John Brown's place.

(1880–1887 missing.)

February, 1888.

851 *Officers.*—President, Jos. S. Harris; vice president, F. C. Yarnall (old manager); secretary and treasurer, S. Shepherd.

Managers.—E. W. Clark (ex-president), F. R. Cope, F. Hazard, C. Parrish, J. M. Willcox, E. Lewis, T. C. Henry, S. Dickson, E. B. Leisenring, Abram S. Hewitt.

February, 1889.

Same officers as 1888.

Same managers, except Thomas McKean took F. Hazard's place.

February, 1890.

Same officers as 1888.

Same managers as 1888.

February, 1891.

Same officers, except vice president's position discontinued (as 1890).

Same managers, except T. C. Henry off board and Edward S. Buckley and Charlemagne Tower, jr., added.

February, 1892.

Same officers and managers as 1891.

February, 1893.

Same officers and managers as 1891.

February, 1894. 852

President, Edward B. Leisenring; secretary and treasurer, S. Shepherd.
Same managers, except Jos. S. Harris, who was until then president, exchanged places with E. B. Leisenring and became a manager.

February, 1895.

President, C. Pardee; secretary and treasurer, S. Shepherd.
Managers same as 1894. (Leisenring out.)

February, 1896.

Same officers as 1897.
Same managers, except J. Bayard Henry took J. M. Willcox's place.

February, 1897.

President, Lewis A. Riley; secretary and treasurer, S. Shepherd.
Same managers, except Charles Parrish and Edward S. Buckley out and their places taken by C. Pardee (ex-president) and John S. Wentz.

February, 1898.

President, L. A. Riley; vice president and auditor (new), C. F. Howell; secretary and treasurer, S. Shepherd.
Managers same as 1897, except James May Duane took C. Tower, 853
jr.'s place.

February, 1899.

Same officers as 1898.
Same managers, except that Henry Pratt McKean took Thomas McKean's place.

February, 1900.

Same officers as 1899.
Same managers as 1899.

February, 1901.

Same officers as 1899.
Same managers as 1899.

February, 1902.

Same officers, except H. F. Baker made secretary and treasurer in place of S. Shepherd (there since 1875).
Same managers, except R. Dale Benson took Edward Lewis's place.

February, 1903.

Same officers as 1902.
Same managers, except Erskine Hewitt took A. S. Hewitt's place.

February, 1904.

Same officers as 1903.
Same managers as 1903.

854 *February, 1905.*

Same officers, except vice president and auditor's position discontinued or vacant.

Same managers, except Edward W. Clark and Calvin Pardee off board and Edward Walter Clark and Richard Y. Cook took their places.

February, 1906.

Officers.—President, Lewis A. Riley (same); vice president, George B. Harris (new); secretary and treasurer, H. F. Baker (same).

Managers, same as 1905.

February, 1907.

Officers.—President, W. A. Lathrop (new); vice president, G. B. Harris (same); secretary and treasurer, H. F. Baker (same).

Managers same, except Lewis A. Riley (last president) took Francis R. Cope's place on board.

February, 1908.

Officers.—President, W. A. Lathrop (same); vice president, Rollin H. Wilbur (took G. B. Harris's place); secretary and treasurer, H. F. Baker (same).

855 Managers same as 1907, as follows: Jos. S. Harris, Lewis A. Riley, Samuel Dickson, Bayard Henry, John S. Wentz, James May Duane, Henry Pratt McKean, R. Dale Benson, Erskine Hewitt, Edward Walter Clark, Richard Y. Cook.

February, 1909.

Officers, same as 1908.

Managers, same as 1908.

February, 1910.

Officers, same as 1908.

Managers, same as 1908, except W. A. Lathrop (then president) added.

February, 1911.

Same officers as 1908.

Same managers as 1908, except C. S. W. Packard took Jos. S. Harris's place (vice).

February, 1912.

Same officers as 1908, except second vice president Edwin Ludlow added.

Same managers as 1911.

February, 1913.

856 *Officers.*—President, S. D. Warriner (new); vice president, Rollin H. Wilbur (same); vice president, Edwin Ludlow (same); vice president and secretary, H. F. Baker (same); assistant secretary, R. V. Pierce (new); treasurer, (none); assistant treasurer, O. E. Neff (new); comptroller, E. M. Reynolds; assistant comptroller, J. C. Campbell.

Managers same, except S. D. Warriner (president) and Geo. H. Frazier, vice Jas. May Duane and W. A. Lathrop (out).

Mr. Kingsbury also read in evidence the following statement of the directors and officers of the Lehigh and New England Railroad Co., from 1903 to 1913, inclusive, furnished by Mr. Wm. Jay Turner:

DIRECTORS AND OFFICERS LEHIGH AND NEW ENGLAND RAILROAD COMPANY, 1903 TO 1913, INCLUSIVE.

Directors.—*1903:* Wm. B. Scott, W. W. Gibbs, W. W. Kurtz, Morris Pfaelzer, J. W. Moffly, G. W. Jackson. *1904:* Wm. Jay Turner, J. R. Whitney, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox. *1905:* E. W. Clark, J. R. Whitney, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox. *1906:* E. W. Clark, J. R. Whitney, L. A. 857
Riley, S. Dickson, J. S. Harris, E. S. Fox. *1907:* E. W. Clark, W. A. Lathrop, L. A. Riley, S. Dickson, J. S. Harris, E. S. Fox. *1908:* E. W. Clark, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox, W. J. Turner, J. M. Duane, R. Y. Cook, J. S. Wentz. *1909:* E. W. Clark, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox, W. J. Turner, J. M. Duane, R. Y. Cook, J. S. Wentz. *1910:* E. W. Clark, L. A. Riley, S. Dickson, J. S. Harris, E. J. Fox, W. J. Turner, J. M. Duane, R. Y. Cook, J. S. Wentz. *1911:* E. W. Clark, L. A. Riley, S. Dickson, E. J. Fox, Bayard Henry, W. J. Turner, J. M. Duane, R. Y. Cook, J. S. Wentz. *1912:* W. J. Turner, L. A. Riley, S. Dickson, B. Henry, E. W. Clark, E. J. Fox, J. M. Duane, R. Y. Cook, J. S. Wentz. *1913:* L. A. 858
Riley, S. Dickson, B. Henry, E. W. Clark, E. J. Fox, J. S. Wentz, R. Y. Cook, G. H. Frazier, W. J. Turner.

Executive committee.—*1903:* (None.) *1904:* L. A. Riley, S. Dickson, J. S. Harris, W. J. Turner. *1905:* L. A. Riley, S. Dickson, J. S. Harris, W. J. Turner, Edw. W. Clark. *1906:* L. A. Riley, S. Dickson, J. S. Harris, W. J. Turner, E. W. Clark. *1907:* L. A. Riley, W. A. Lathrop, J. S. Harris, W. J. Turner, E. W. Clark. *1908:* L. A. Riley, W. A. Lathrop, J. S. Harris, W. J. Turner, E. W. Clark. *1909:* R. Y. Cook, W. A. Lathrop, J. M. Duane, W. J. Turner, J. S. Wentz. *1910:* 859
R. Y. Cook, W. A. Lathrop, J. M. Duane, W. J. Turner, J. S. Wentz. *1911:* R. Y. Cook, W. A. Lathrop, J. M. Duane, W. J. Turner, J. S. Wentz. *1912:* R. Y. Cook, S. D. Warriner, J. M. Duane, W. J. Turner, J. S. Wentz. *1913:* R. Y. Cook, S. D. Warriner, G. H. Frazier, W. J. Turner, J. S. Wentz.

Officers.—President: *1903:* W. J. Turner. *1904:* W. J. Turner. *1905:* W. J. Turner. *1906:* W. J. Turner. *1907:* W. J. Turner. *1908:* W. A. Lathrop. *1909:* W. A. Lathrop. *1910:* W. A. Lathrop *1911:* W. A. Lathrop. *1912:* S. D. Warriner. *1913:* S. D. Warriner.

Vice president: *1903:* (None.) *1904:* L. A. Riley. *1905:* L. A. Riley. *1906:* L. A. Riley. *1907:* W. A. Lathrop. *1908:* (None.) *1909:* (None.) *1910:* (None.) *1911:* (None.) *1912:* (None.) *1913:* 860
H. F. Baker.

Vice president and general manager: *1903:* (None.) *1904:* (None.) *1905:* (None.) *1906:* (None.) *1907:* (None.) *1908:* R. H. Wilbur. *1909:* R. H. Wilbur. *1910:* R. H. Wilbur. *1911:* R. H. Wilbur. *1912:* R. H. Wilbur. *1913:* R. H. Wilbur.

Vice president and general counsel: *1903:* (None.) *1904:* (None.) *1905:* (None.) *1906:* (None.) *1907:* (None.) *1908:* W. J. Turner. *1909:* W. J. Turner. *1910:* W. J. Turner. *1911:* W. J. Turner. *1912:* W. J. Turner. *1913:* W. J. Turner.

861 Secretary: *1903:* J. R. Sagee. *1904:* J. R. Sagee. *1905:* H. F. Baker. *1906:* H. F. Baker. *1907:* H. F. Baker. *1908:* H. F. Baker. *1909:* H. F. Baker. *1910:* H. F. Baker. *1911:* H. F. Baker. *1912:* H. F. Baker. *1913:* H. F. Baker.

Assistant secretary: *1903:* (None.) *1904:* H. F. Baker. *1905:* J. F. Hoffmeister. *1906:* J. F. Hoffmeister. *1907:* S. S. Sneyd. *1908:* S. S. Sneyd. *1909:* S. S. Sneyd. *1910:* S. S. Sneyd. *1911:* S. S. Sneyd. *1912:* S. S. Sneyd. *1913:* S. S. Sneyd.

862 Treasurer: *1903:* F. S. Fowler. *1904:* J. R. Sager. *1905:* H. F. Baker. *1906:* H. F. Baker. *1907:* H. F. Baker. *1908:* H. F. Baker. *1909:* H. F. Baker. *1910:* H. F. Baker. *1911:* H. F. Baker. *1912:* H. F. Baker. *1913:* H. H. Pease.

Assistant treasurer: *1903:* J. R. Sager. *1904:* H. F. Baker. *1905:* F. S. Fowler. *1906:* F. S. Fowler. *1907:* F. S. Fowler. *1908:* F. S. Fowler. *1909:* S. S. Sneyd. *1910:* S. S. Sneyd. *1911:* S. S. Sneyd. *1912:* S. S. Sneyd. *1913:* O. E. Neff.

Comptroller: *1903:* (None.) *1904:* (None.) *1905:* (None.) *1906:* (None.) *1907:* (None.) *1908:* (None.) *1909:* (None.)
863 *1910:* E. M. Reynolds. *1911:* E. M. Reynolds. *1912:* E. M. Reynolds. *1913:* E. M. Reynolds.

Auditor: *1903:* (None.) *1904:* (None.) *1905:* (None.) *1906:* (None.) *1907:* (None.) *1908:* E. Hughes. *1909:* E. Hughes. *1910:* E. Hughes. *1911:* E. Hughes. *1912:* E. M. Kuntz. *1913:* E. M. Kuntz.

864 Mr. Kingsbury also read in evidence a statement furnished by Mr. Wm. Jay Turner in regard to officers and employees of the Lehigh and New England Railroad Co., other than those shown in the annual reports, who also render services to the Lehigh Coal and Navigation Company, or its affiliated companies:

The following is a list of such officers and employees: Superintendent, real estate agent, auditor, purchasing agent, assistant purchasing agent, assistant treasurer, assistant secretary, and assistant engineer. Of the salaries received by these various persons, the L. & N. E. R. R. pays the following percentage:

	Per cent.
Superintendent	80
Real estate agent	33⅓
Auditor	76
Purchasing agent	20
Assistant purchasing agent	41⅔
Assistant treasurer	43½
Assistant secretary	30
Assistant engineer	50

Mr. Kingsbury also read in evidence the following statement of the officers and directors of the Lehigh and Hudson River Railway Co., under its various corporate names, from Dec., 1883, to Dec., 1913, furnished by Judge Beattie:

STATEMENT OF THE OFFICERS AND DIRECTORS OF THE LEHIGH & HUD- 865
SON RIVER RAILWAY COMPANY UNDER ITS VARIOUS CORPORATE NAMES, FROM DECEMBER 3D, 1883, TO DECEMBER, 1913.

Prepared under the direction of John J. Beattie, solicitor for the defendant, the Lehigh & Hudson River Railway Company, in the action of the United States of America against the Reading Company et al., at the request of Howard Thayer Kingsbury, special assistant to the Attorney General.

For the year ending December 31, 1883.

Officers: President, Grinnell Burt; vice president, Chas. E. Noble; secretary and treasurer, Daniel B. Halstead.

Directors.—Grinnell Burt, George W. Sanford, Richard Wisner, William C. Sheldon, Daniel B. Halstead, Thomas C. Platt, John S. Martin, Chas. E. Noble, Garret A. Hobart, Frederic A. Potts, James B. Titman, Charles Scranton, John H. Seed.

The minutes of the company do not show the names of the direc- 866
tors elected in 1884, but from the records of the first meeting held in 1885, the same directors seem to have been reelected.

For the year ending December 31, 1885.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.

Directors.—Grinnell Burt, John S. Martin, Garret A. Hobart, Frederic A. Potts, Francis C. Yarnall, Edward W. Clark, William C. Sheldon, George W. Sanford, James B. Titman, Joseph S. Harris, Francis R. Cope, Edward Lewis, W. Rockhill Potts.

For the year ending September 30, 1886.

Officers.—President, Grinnell Burt; vice president, Joseph S. Har- 867
ris; secretary, Daniel B. Halstead; treasurer, John Sayer.

Directors.—Grinnell Burt, Joseph S. Harris, Frederic A. Potts, William C. Sheldon, Garret A. Hobart, Edward W. Clark, John S. Martin, Francis C. Yarnall, Francis R. Cope, W. Rockhill Potts, James B. Titman, George W. Sanford, Edward Lewis.

For the year ending September 30, 1887.

Officers.—President, Grinnell Burt; vice president, Joseph S. Har- 868
ris; secretary, Daniel B. Halstead; treasurer, John Sayer.

Directors.—Grinnell Burt, Joseph S. Harris, Frederic A. Potts, George W. Sanford, Edward W. Clark, William C. Sheldon, John S. Martin, Francis C. Yarnall, R. T. Davies, James B. Titman, W. Rockhill Potts, Garret A. Hobart, H. O. Marsh.

For the year ending September 30, 1888.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.

Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, E. W. Clark, Austin Corbin, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, George W. Sanford, William C. Sheldon, Francis C. Yarnall.

For the year ending September 30, 1889.

869 *Officers.*—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, E. W. Clark, Austin Corbin, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, George W. Sanford, George R. Sheldon, Francis C. Yarnall.

For the year ending June 30, 1890.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
870 *Directors.*—E. D. Adams, G. F. Baker, Grinnell Burt, E. W. Clark, Austin Corbin, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, George W. Sanford, George E. Sheldon, Francis C. Yarnall.

For the year ending June 30, 1891.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, E. W. Clark, Chas. Caldwell, Austin Corbin, Joseph S. Harris, Garret A. Hobart, Edward Lewis, J. R. Maxwell, John S. Martin, W. R. Potts, George
871 W. Sanford.

For the year ending June 30, 1892.

Officers.—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, C. F. Baker, Grinnell Burt, Charles Caldwell, E. W. Clark, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, W. R. Potts, George W. Sanford.

For the year ending June 30, 1893.

872 *Officers.*—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, Chas. Caldwell, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, W. R. Potts, George W. Sanford.

For the year ending June 30, 1894.

873 *Officers.*—President, Grinnell Burt; vice president, Joseph S. Harris; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, Chas. Caldwell, E. B. Leisenring, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, W. R. Potts, George W. Sanford.

For the year ending June 30, 1895.

Officers.—President, Grinnell Burt; vice president, C. Pardee; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, Chas. Caldwell, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, C. Pardee, W. R. Potts, George W. Sanford.

For the year ending June 30, 1896. 874

Officers.—President, Grinnell Burt; vice president, C. Pardee; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—E. D. Adams, G. F. Baker, Grinnell Burt, Chas. Caldwell, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, C. Pardee, W. R. Potts, George W. Sanford.

For the year ending June 30, 1897.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—G. F. Baker, Grinnell Burt, Chas. Caldwell, H. C. 875
Fahnestock, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, John S. Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, George W. Sanford.

For the year ending June 30, 1898.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—G. F. Baker, Grinnell Burt, Chas. Caldwell, H. C. 876
Fahnestock, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, William Vail Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, George W. Sanford.

For the year ending June 30, 1899.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—Grinnell Burt, G. F. Baker, Chas. Caldwell, H. C. Fahnestock, Henry Graves, Joseph S. Harris, Garret A. Hobart, Edward Lewis, William Vail Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, George W. Sanford.

For the year ending June 30, 1900.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary, Daniel B. Halstead; treasurer, John Sayer.
Directors.—Grinnell Burt, G. F. Baker, Chas. Caldwell, James M. 877
Duane, H. C. Fahnestock, Henry Graves, Joseph S. Harris, Edward Lewis, William V. Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, Richard Wisner.

For the year ending June 30, 1901.

Officers.—President, Grinnell Burt; vice president, Lewis A. Riley; secretary and treasurer, John Sayer.
Directors.—Grinnell Burt, G. F. Baker, Chas. Caldwell, James M. 878
Duane, H. C. Fahnestock, Henry Graves, Joseph S. Harris, Edward Lewis, William V. Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley, Richard Wisner.

For the year ending June 30, 1902.

Officers.—President, Lewis A. Riley; secretary and treasurer, John Sayer.

Directors.—George F. Baer, George F. Baker, Chas. Caldwell (deceased), R. T. Davies, James M. Duane, Alfred Ely, H. C. Fahnestock, Henry Graves Joseph S. Harris, William Vail Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley.

For the year ending June 30, 1903.

Officers.—President, Lewis A. Riley; secretary and treasurer, John Sayer.

879 *Directors.*—George F. Baer, George F. Baker, R. T. Davies, James M. Duane, Alfred Ely, H. C. Fahnestock, Thomas P. Fowler, Henry Graves, William Vail Martin, Joseph S. Harris, J. R. Maxwell, W. R. Potts, Lewis A. Riley.

For the year ending June 30, 1904.

Officers.—President, Lewis A. Riley; secretary and treasurer, John Sayer.

Directors.—George F. Baer, George F. Baker, R. T. Davies, James M. Duane, Alfred Ely, H. C. Fahnestock, Thomas P. Fowler, Henry Graves, Joseph S. Harris, William Vail Martin, J. R. Maxwell, W. R. Potts, Lewis A. Riley.

For the year ending June 30, 1905.

880 *Officers.*—President, Lewis A. Riley; secretary and treasurer, John Sayer.

Directors.—George F. Baer, R. T. Davies, James M. Duane, Alfred Ely, Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, W. R. Potts, S. M. Prevost (deceased), Lewis A. Riley, E. B. Thomas, W. H. Truesdale, F. B. Underwood.

For the year ending June 30, 1906.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.

881 *Directors.*—George F. Baer, R. T. Davies, James M. Duane, Alfred Ely, Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, W. R. Potts, Lewis A. Riley, E. B. Thomas, W. H. Truesdale, J. B. Thayer, F. B. Underwood.

For the year ending June 30, 1907.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.

Directors.—George F. Baer, James M. Duane, Robert W. de Forest, Alfred Ely, Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, Lewis A. Riley, Morris Rutherfurd, J. B. Thayer, E. B. Thomas, W. H. Truesdale, F. B. Underwood.

For the year ending June 30, 1908.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, 882
Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, Lewis A. Riley, Morris Rutherfurd, J. B. Thayer, E. B. Thomas, W. H. Truesdale, F. D. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1909.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, 883
Thomas P. Fowler, Joseph S. Harris, J. R. Maxwell, Lewis A. Riley, Morris Rutherfurd, John B. Thayer, Eben W. Thomas, William H. Truesdale, F. D. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1910.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, Thomas P. Fowler, Joseph S. Harris (deceased 1910), J. Rogers Maxwell, Lewis A. Riley, Morris Rutherfurd, John B. Thayer, E. B. Thomas, William H. Truesdale, Frederick D. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1911.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, 884
Thomas P. Fowler, William A. Lathrop, Lewis A. Riley, Morris Rutherfurd, Edward T. Stotesbury, J. B. Thayer, E. B. Thomas, William H. Truesdale, Frederick D. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1912.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, James M. Duane, Robert W. de Forest, 885
Thomas P. Fowler, William A. Lathrop (deceased 1912), Lewis A. Riley, Morris Rutherfurd, Edward T. Stotesbury, John B. Thayer (deceased 1912), Eben B. Thomas, William H. Truesdale, F. C. Underwood, Rollin H. Wilbur.

For the year ending June 30, 1913.

Officers.—President, Lewis A. Riley; vice president and general manager, Morris Rutherfurd; secretary and treasurer, John Sayer.
Directors.—George F. Baer, Robert W. de Forest, George D. Dixon, Thomas P. Fowler, George H. Frazier, Lewis A. Riley, Morris Rutherfurd, Edward T. Stotesbury, Eben B. Thomas, William H. Truesdale, Frederick D. Underwood, Samuel D. Warriner, Rollin D. Wilbur.

Mr. Kingsbury also read in evidence a statement, furnished by Judge Beattie, in regard to the acquisition of certain shares of stock of the Lehigh and Hudson River Railway Co. by Mr. Geo. F. Baer.

Judge Beattie states that he furnishes this statement under protest and objection, on the ground that it is wholly immaterial and irrelevant to any of the issues raised upon the petition and answers in the suit now pending, and concerning only corporations not parties to the suit.

886 The statement follows:

Between the 3d day of December, 1901, and the 7th day of November, 1906, Mr. Baer became the holder of 6,203 shares of the stock of this company. In 1904 he transferred to the D. L. & W., Pennsylvania Railroad Company and E. B. Thomas 1,150 shares each, and to the Erie Railroad Company 650 shares. In 1906 he transferred to the Erie Railroad Company 500 shares.

Mr. Kingsbury also read in evidence a statement in regard to the disposition of freight charges by the Philadelphia and Reading Railroad Co. in favor of the Philadelphia and Reading Coal and Iron Co., furnished by Mr. Reynolds, as follows:

The property of the Philadelphia & Reading Coal and Iron Co. was, on February 20, 1893, placed in the hands of receivers appointed by the Circuit Court of the United States for the Eastern District of Pennsylvania. Prior to that time the P. & R. C. & I. Co., following a long established usage, kept a running account with the P. & R. Rd. Co. giving all the current charges and credits in connection with the operation of the company.

On the date of the appointment of said receivers, February 20, 1893, the current account of the coal and iron company with the railroad company showed a credit total in favor of the railroad company of.		$17,274,828.88
887 Of which freight and tolls amount to.....	$11,767,238.88	
On the same date the credit total in favor of the coal and iron company amounted to.....		15,405,230.91
Showing a balance indebtedness to the railroad company from the coal and iron company of.....		1,869,597.97
During the said receiver-ship, which lasted until Nov. 30, 1896, this balance in favor of the railroad company was increased by.....		2,959,988.17
		4,829,586.14
The current account of the receivers of the coal and iron company with the receivers of the railroad company showing at the end of the receivership a credit total in favor of the receivers of the railroad company of.....	$5,050,864.27	
Of which freights and tolls amount to.	$1,686,282.84	
At the same time the credit total in favor of the receivers of the coal and iron company amounted to..	221,278.13	
		4,829,586.14

This balance of $4,829,586.14 became a part of the indebtedness (about $69,000,000) of the coal and iron company to the railroad company, which constituted the amount of the latter's claim against
888 the coal and iron company. Among the assets of the P. & R. Railroad Company sold at the receivers' public sale on September 23, 1896,

and purchased by Messrs. Coster and Stetson, was the whole of the railroad company's claim against the coal and iron company, including this balance.

Mr. Kingsbury also read in evidence, from Public Document No. 1442, 62nd Congress, third session, entitled "**Increase in Prices of Anthracite Coal,**" two passages on pp. 11 and 12 thereof.

Mr. REYNOLDS. The defendants object to that going in as testimony, as it is merely a conclusion, and evidently hearsay—shows so intrinsically—and the defendants have no opportunity whatever of cross-examination of the one who compiled it.

The passages are as follows:

INCREASE IN WHOLESALE PRICES.

The increase in wholesale prices, as measured by the net receipts from sales of anthracite coal by the operators since the agreement of May 20, 1912, amounted to an average of 25.82 cents per ton.[a] if the prices existing in June, July, August, and September, 1911, are compared with the prices realized during the same months of 1912. On this basis of comparison the average increase in the price of sizes of coal prepared for domestic consumption amounted to 31.23 cents per ton and the average increase on pea coal and the smaller steam sizes amounted to 16.14 cents per ton.

This increase was in part due to the unusually active demand for coal in the summer of 1912 and can not properly be assumed to be a 889
permanent increase. It seems proper to consider as the probable permanent increase the advances in the circular prices asked for coal. A weighted calculation of the average increase[b] in the circular prices of the Philadelphia & Reading Coal & Iron Co. for the prepared sizes of white ash coal shows that the average increase at tidewater was 34.3 cents per ton and on sales for railroad shipments 23.2 cents per ton. The average for all sales (allowing 25 per cent of the total shipments for tidewater sales in accordance with the results of 1911) was 26 cents per ton on the prepared sizes. No similar calculation can be made for the steam sizes, since no circular prices are ordinarily issued to cover steam sizes at tidewater and even when issued have little significance.

(Page 12:)

BENEFITS TO ANTHRACITE MINE WORKERS FROM AGREEMENT OF 1912.

The anthracite mine workers were benefitted by the agreement of 890
May 20, 1912, not only through a net increase in their wage rates, which averaged 5.6 per cent, but through the concession of certain working conditions which were considered of importance, though they can not be measured in terms of money. An additional item of importance to the miners was the partial recognition of their organization, both in the negotiations and in the form in which the agreement was signed.

[a] Average for seven companies, covering about 70 per cent of total sales. See Ch. III, p. 20.
[b] The circular increase of 25 cents per ton on chestnut coal, announced in November, 1910, or April, 1911, by the various companies, is included in this calculation.

The advance of 5.6 per cent in mine workers' wages represents an average increase of 9 cents per ton in the cost of producing coal, and on the basis of the shipments from June to December, 1912, amounted in round numbers to $4,000,000.

Mr. Kingsbury offered in evidence a statement in regard to the history of the defendant Lehigh and Hudson River Railway Co., furnished by Judge Beattie (marked "**Gov. Ex. 76, C. H. G.**").

In the District Court of the United States, Eastern District of Pennsylvania.

UNITED STATES OF AMERICA, PETITIONER, *against* THE READING COMPANY AND OTHERS, DEFENDANTS.

Exhibit on behalf of the defendant the Lehigh and Hudson River Railway Company.

The Warwick Valley Railroad Company was organized on the 8th day of March, 1860, and built and operated its road from Warwick, New York, to Greycourt, New York, a distance of 11 miles, where it connected with what is now known as the Erie Railroad Company.

On the 22nd day of May, 1879, the Wawayanda Railroad Company was organized and built its line from Warwick, New York, to McAfee, New Jersey, where it connected with the McAfee Branch of the Sussex Railroad Company, extending from McAfee to Franklin Junction, New Jersey.

On the 30th day of January, 1880, the Warwick Valley Railroad Company and the Wawayanda Railroad Company were consolidated under the name of the Warwick Valley Railroad Company.

On the 6th day of January, 1881, the Lehigh and Hudson River Railroad Company was organized under the laws of New Jersey, and on the 16th day of May, 1881, that company was consolidated with the Pequest & Wallkill Railroad Company, which had been incorporated under the laws of New Jersey on the 23rd day of February, 1866.

On the 1st day of September, 1881, the Lehigh and Hudson River Railroad Company purchased from the Sussex Railroad Company what was known as the McAfee Branch of the Sussex Railroad Company, and, upon such purchase, the line of the Warwick Valley Railroad Company, extending from Greycourt, New York, to McAfee, New Jersey, in connection with the line of the Lehigh and Hudson River Railroad Company, formed a direct and continuous line of railroad to Belvidere, New Jersey, where it connected with the Pennsylvania Railroad.

On the 12th day of January, 1882, the Warwick Valley Railroad Company and the Lehigh and Hudson River Railroad Company were consolidated under the corporate name of the Lehigh and Hudson River Railway Company.

In the year 1885, the company was compelled to fund the coupons upon its issue of bonds, in the sum of $800,000, and the default in the payment of interest thereon continued for two years.

In the year 1885, the Lehigh Coal & Navigation Company became the owner of a minority interest of the stock of the company.

On Nov. 28th, 1888, the Orange County Railroad Company was organized, and built its line of railroad from a point of connection with the Lehigh and Hudson River Railway Company near Greycourt, New York, to Maybrook, New York.

The line of the Orange County Railroad Company was constructed in the year 1889 with moneys furnished equally by the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey, and the stock control of the Orange County Railroad Company became vested in the Lehigh and Hudson River Railway Company upon its repayment to the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey of the sum of $367,000., the actual cost of the construction of the Orange County Railroad.

On the 27th day of February, 1889, the Lehigh and Hudson River Railway Company entered into an agreement with the Pennsylvania Railroad Company, for a term of 99 years from said date, and thereafter until terminated by 18 months notice in writing. Under that agreement the Pennsylvania Railroad Company acquired the right to run its engines and cars over the line of the Lehigh and Hudson River Railway Company from the connection at Belvedere to Greycourt, and a connection with the Orange County Railroad at Greycourt, and the Lehigh and Hudson River Railway Company acquired the right to run its engines and trains over the Pennsylvania Railroad from Belvedere to Phillipsburg, N. J.

Up to that time, all the freight passing over the line of the Lehigh and Hudson River Railway Company destined to points in New England was delivered to the Erie Railroad at Greycourt, and was carried to Newburgh on the Hudson, and there loaded upon floats and transferred to the line of the New England Railroad Company on the east shore of the river.

Soon after the completion of the Orange County Railroad this method of shipment was abandoned, and all freight passing over the Lehigh and Hudson River Railway, destined to points in New England, was transported over the line of the latter and of the Orange County Railroad Company to Maybrook, New York, where it was delivered to what is now known as the Central New England Railroad Company, and transported by that line to New England in connection with the New York, New Haven & Hartford Railroad.

On the 25th day of July, 1889, the South Easton and Phillipsburg Railroad Company of New Jersey and the South Easton and Phillipsburg Railroad Company of Pennsylvania were organized to build a railroad bridge across the Delaware River at Phillipsburg, giving the Lehigh and Hudson River Railway direct access to the city of Easton, Pa.

The bridge was built with money furnished by the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey, at a cost of $171,690.94; which amount was thereafter repaid by the Lehigh and Hudson River Railway Company to said companies.

Since the completion of the bridge, the direct operating line of the Lehigh and Hudson River Railway Company has been from Easton, Pa., to Maybrook, N. Y.

On the 23rd day of November, 1907, the Orange County Railroad Company was consolidated with the Lehigh and Hudson River Railway Company, under the name of the Lehigh and Hudson River Railway Company.

On the 2nd day of April, 1912, the South Easton and Phillipsburg Railroad Company of New Jersey and the South Easton and Phillipsburg Railroad Company of Pennsylvania were consolidated with the Lehigh and Hudson River Railway Company; and at the same time the Mine Hill Railroad Company, connected and located at Franklin Junction, New Jersey, was also consolidated with the Lehigh and Hudson River Railway Company.

At the time of the consolidation of the Orange County Railroad Company with the Lehigh and Hudson River Railway Company, the last named company was the owner of the capital stock of the first named company, of the par value of $200,000. This stock, by the terms of the agreement of consolidation, became exchangeable for the stock of the Lehigh and Hudson River Railway Company in an equal amount, and the authorized capital stock of the latter company was increased in that amount.

Upon the consolidation of the South Easton and Phillipsburg Railroad Companies of New Jersey and Pennsylvania, and the Mine Hill Railroad Company with the Lehigh and Hudson River Railway Company, the last named company was the owner of the capital stock of the said three first named companies, of the par value of $180,000. This stock, by the terms of the agreement of consolidation, became exchangeable for the stock of the Lehigh and Hudson River Railway Company in an equal amount, and the authorized capital stock of the latter company was increased in that amount, making the total authorized capital stock of the Lehigh and Hudson River Railway Company the sum of $1,720,000, of which amount stock of the par value of $380,000 is now in the treasury of the company.

On July 1, 1890, the Lehigh and Hudson River Railway Company executed its general mortgage to Central Trust Company of New York, as trustee, to secure bonds in the sum of $3,000,000; of which bonds in the sum of $1,062,000 were guaranteed by the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey; bonds in the sum of $330,000 were reserved for the acquisition of additional railways.

Of the amount so reserved, $82,000 of bonds were issued upon the purchase and consolidation of the Mine Hill Railroad Company.

Upon the payment of the prior lien bonds now outstanding, in the sum of $164,000, the said general mortgage will be the only lien by way of mortgage on all the franchises and property of the Lehigh and Hudson River Railway Company from Easton, Pa., to Maybrook, N. Y., the lien of said general mortgage having been extended by supplemental mortgages to all the franchises and property of the other companies consolidated with the Lehigh and Hudson River Railway Company, as heretofore stated.

Thus, through the aid given to this company by the Lehigh Coal & Navigation Company and the Central Railroad Company of New Jersey at a time when it was practically bankrupt, this company has established itself as a part of an all-rail through line from the East to

the West, with adequate facilities and equipment, and a rapidly increasing traffic, as shown by the following tables:

Earnings of the Lehigh and Hudson River Railway Company for the year ending June 30, 1891.

Freight	$339,373.94
Passenger	23,425.79
Mail	3,141.00
Express	2,862.48
Miscellaneous	12,899.16
Total	381,702.37
Income from Orange County Railroad, 6 months ending June 30, 1891	1,411.04
Total	383,113.41

Statement of operations, earnings, etc., for ten fiscal years ended June 30, 1913.

	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913
Miles of R. R. operated	77.20	77.20	85.90	96.60	96.60	96.60	96.60	96.60	96.60	96.60
Passenger train mileage	79,220	113,242	113,286	117,910	130,604	87,990	66,888	67,017	67,844	106,554
Freight train mileage	170,143	148,426	220,253	352,040	318,834	478,400	495,786	495,879	557,039	591,642
Mixed train mileage	65,858	17,680	13,732	27,406	22,932	32,928	47,786	52,568	57,704	64,856
Total revenue train mileage	315,221	279,348	347,271	497,356	472,370	599,318	610,460	615,464	682,587	763,052
Mileage nonrevenue trains	11,044	18,135	23,670	36,695	60,374	35,677	39,455	21,969	39,057	36,128
Total train mileage	326,265	297,483	370,941	534,001	532,744	634,995	649,915	637,433	721,644	799,180
Passengers carried	132,027	124,208	136,669	154,657	173,097	160,333	152,172	157,002	163,060	158,148
Passenger one mile	1,528,535	1,541,450	1,754,136	1,925,027	2,179,083	1,970,616	1,849,054	1,955,150	1,989,670	1,917,939
Freight (tons) moved	976,976	905,377	1,482,248	1,974,859	1,935,213	3,009,983	3,629,848	3,757,035	4,267,227	4,700,898
Freight (tons) one mile	51,833,402	45,207,819	70,678,038	109,766,919	111,986,219	200,075,041	244,561,312	257,807,254	299,423,415	331,727,702
Passenger earnings	$34,608	$35,009	$40,016	$44,414	$49,596	$46,365	$44,383	$46,376	$47,444	$94,903
Freight earnings	415,170	490,450	567,189	781,866	785,519	1,184,750	1,378,531	1,409,773	1,553,458	1,735,913
Mail and express earnings	9,847	10,403	17,095	14,362	15,314	16,455	12,182	13,686	14,473	14,411
Miscellaneous earnings	27,488	18,257	2,671	3,692	3,090	3,746	4,937	4,960	6,515	4,208
Gross earnings	487,113	464,110	626,971	844,334	851,519	1,251,316	1,440,033	1,465,795	1,621,891	1,849,435
Operating expenses	286,952	292,795	372,699	540,051	607,524	868,656	889,401	907,756	1,063,234	1,242,608
Net earnings	200,161	171,315	254,302	304,283	243,995	382,660	550,632	558,039	558,657	606,827
Other receipts			4,958	24,243					14,964	4,933
Net income	200,161	171,315	259,260	328,526	243,995	382,660	550,632	558,039	573,621	611,760
Interest	130,087	133,116	135,037	155,898	167,506	173,586	178,838	175,695	166,384	158,846
Taxes	9,724	10,392	11,190	23,208	31,446	32,913	37,413	41,767	44,250	48,067
Other deductions	12,024	5,784	4,541	106,033	33,511	95,761	80,209	96,313	126,235	132,672
Surplus	48,326	22,023	72,492	43,387	11,532	80,400	245,172	244,264	236,771	272,174
Gross earnings per mile	6,309.75	6,011.79	7,299.00	8,740.00	8,815.00	12,953.00	14,907.00	15,174.00	16,790.00	19,145.00
Gross expenses per mile	3,716.99	3,792.68	4,338.00	5,591.00	6,289.00	8,992.00	9,207.00	9,397.00	11,007.00	12,863.00
Net earnings per mile	2,592.76	2,219.11	2,961.00	3,149.00	2,526.00	3,961.00	5,700.00	5,777.00	5,783.00	6,282.00
Expenses to earnings, ratio	58.91%	63.08%	59.44%	63.96%	71.34%	69.42%	61.70%	61.92%	65.55%	67.19%
Average rate per passenger per mile	2.26c.	2.27c.	2.28c.	2.28c.	2.26c.	2.33c.	2.40c.	2.37c.	2.38c.	2.48c.
Average rate per ton per mile	0.80c.	0.85c.	0.80c.	0.71c.	0.70c.	0.59c.	0.56c.	0.54c.	0.52c.	0.516c.

EQUIPMENT, 1913.

Locomotives:		Box cars	75
8 drivers	24	Milk cars	8
6 drivers	19	Stock cars	2
4 drivers	3	Flat cars	14
	46	Gondola cars	475
Passenger cars	5	Service cars	125
Combination cars	6	Cabooses	31
	11	Steam wrecking crane, 75 tons	1
		Steam ditcher	1
			732

The bulk of the traffic carried by the Lehigh and Hudson River Railway Company is delivered by it to or received by it from the Central New England Railway Company at Maybrook, New York. The other carriers delivering to and receiving from the last-named company at practically the same point are the Erie Railroad Company, the New York, Ontario & Western Railroad Company, and the Lehigh and New England Railroad Company.

The Lehigh & Hudson River Railway Company pays a rental or compensation for the use of the yard of the Central New England at Maybrook and for the movement of cars therein, based upon the proportion of cars handled by the Central New England in their yard, and it appears that such proportion for the past five years has been as indicated by the following schedule:

THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY—ACCOUNTING DEPARTMENT.

Number of cars handled through Maybrook yard for L. & H. R. Ry. Co. and the percentage which they bear to the total cars handled at that point.

	Eastbound.		Westbound.		Both directions.	
	Cars.	Per cent of total E. & W.	Cars.	Per cent of total E. & W.	Cars.	Per cent of total E. & W.
Nov., 1913	8,732	27.81	7,701	24.56	16,433	52.40
July, 1913	8,467	29.04	7,792	26.73	16,259	55.77
March, 1913	8,468	28.02	8,281	27.40	16,749	55.42
Nov., 1912	9,696	29.87	8,826	27.19	18,522	57.06
July, 1912	9,014	27.62	8,295	25.42	17,309	53.04
March, 1912	12,002	30.73	10,788	27.62	22,790	58.35
Nov., 1911	9,399	29.09	8,205	25.37	17,604	54.46
July, 1911	7,720	28.42	7,135	26.27	14,855	54.69
March, 1911	7,436	26.91	6,281	22.73	13,717	49.64
Nov., 1910	8,570	28.97	7,057	23.85	15,627	52.82
July, 1910	6,235	26.28	5,397	22.75	11,632	49.03
March, 1910	6,943	26.92	6,707	26.01	13,650	52.93
Nov., 1909	8,645	29.18	7,407	24.72	16,052	53.90
July, 1909	6,802	28.02	6,467	26.64	13,269	54.66
March, 1909	7,124	25.88	7,141	25.94	14,265	51.82
Nov., 1908	9,034	30.12	7,967	26.56	17,001	56.64

WARWICK, N. Y., *February, 1914.*

The traffic relations of the Lehigh and Hudson River Railway Company with the Lehigh Coal & Navigation Company, the Central Railroad Company of New Jersey, and the Philadelphia & Reading Railroad Company, and the volume of traffic carried by it for said companies, compared with such relations and the volume of traffic carried by the Lehigh and Hudson River Railway for other carriers,

in the respective years ending June 30, 1891, and June 30, 1912, are shown by the following tables:

THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY—ACCOUNTING DEPARTMENT.

Statement of tonnage, year ended June 30, 1891.

Total tonnage	637,261	
Total A.—Coal tonnage:		
Freight coal via Newburg		184,806
Via Maybrook:		
A. coal	86,966	
B. coal	48,217	135,183
Merchandise:		
Eastbound:		
C. R. R. to C. N. E	730	
C. R. R. to B. & M	22,027	
P. & R. to C. N. E	209	
P. & R. to B. & M	688	23,654
Westbound:		
C. N. E. to C. R. R	3,940	
C. N. E. to P. & R	72	
B. & M. to C. R. R	736	
B. & M. to P. & R	537	5,285
		348,927
Balance local between L. & H. stations and to and from L. & H. and connecting lines		288,334

Correct.

F. F. WILDRICK, *Auditor.*

THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY—ACCOUNTING DEPARTMENT.

Statement of tonnage, year ending June 30, 1912.

	A coal.	B coal.	Mdse.
A coal:			
C. R. R.-L. V.-P. & R. via Maybrook	730,413		
B coal:			
W. M. and B. & O. via Maybrook		658,405	
P. R. R. via Maybrook		366,256	
Merchandise:			
L. V. R. R. to C. N. E. Ry			18,60
C. R. R. to C. N. E. Ry			15,56
P. & R.-W. M. & B. & O. to C. N. E. Ry			9,13
C. R. R. to N. Y., N. H. & H. R. R			96,06
P. & R. to N. Y., N. H. & H. R. R			39,34
W. M. Ry. to N. Y., N. H. & H. R. R			51,04
B. & O. R. R. to N. Y., N. H. & H. R. R			68,36
C. S. D. & B. R. D. to N. Y., N. H. & H. R. R			229,56
D. L. & W. to C. N. E. & N. Y., N. H. & H. R. R			465,06
C. N. E. to L. V. R. R			65
C. N. E. to C. R. R. of N. J			1,56
C. N. E. to P. & R., W. M. & B. & O			6,66
N. Y., N. H. & H. to C. R. R. of N. J			6,46
N. Y., N. H. & H. to P. & R. Ry			22,56
N. Y., N. H. & H. to W. M			7,16
N. Y., N. H. & H. to B. & O			17,90
N. Y., N. H. & H. to C. S. D. & B. R. D			35,94
C. N. E. & N. Y., N. H. & H. to D., L. & W			145,46
Total	730,413	1,024,661	1,236,95
Total tonnage for year	753,039	1,044,230	2,469,93
Balance L. & H. stations local, and to and from connecting lines	22,626	19,569	1,233,05

Correct.

F. F. WILDRICK, *Auditor.*

WARWICK, N. Y., *February 18, 1914.*

Of the 13,400 shares of the capital stock issued of the Lehigh and Hudson River Railway Company, aside from the stock held by the directors and a few scattering shares, the stock is held and owned as follows:

	Shares.
Delaware, Lackawanna & Western Railroad Company	1,622
Erie Railroad Company	1,621
George F. Baer	1,593
Lehigh Valley Railroad Company	1,621
Lehigh Coal & Navigation Company	5,005
Pennsylvania Railroad Company	1,627

Mr. GORDON. The Government makes a call for a list of the fifty largest stockholders of the Reading Company to be sent to the examiner and incorporated in the record at this point.

Such a list was later furnished for the record, as follows:

List of fifty largest stockholders at close of business March 16, 1914. 891

	1st pref. shares.	2nd pref. shares.	Common shares.	Total shares.	
Lake Shore & Mich. Sthn. Ry. Co., Grand Cen. Ter., New York City	121,300	285,300	200,050	606,650	
Balto. & Ohio R. R. Co., Baltimore, Md	121,300	285,300	200,000	606,600	
P. A. B. Widener, Land Title Bldg., Philadelphia			100,000	100,000	
Whitehouse & Co., 111 Broadway, N. Y. C	9,295	23,436	11,756	44,487	
Pyne, Kendall & Hollister, 55 Wall St., N. Y			31,580	31,580	
Huhn, Ody & Co., 111 Broadway, N. Y	400		29,300	29,700	
George F. Baker, 2 Wall St., New York			17,500	17,500	
A. Iselin & Co., 36 Wall St., New York	14,577	1,100	1,250	16,727	
Oliver H. Payne, 51 Wall St., New York			15,000	15,000	
Est. of Thos. McKean, Drexel Bldg., Phila	11,450		3,400	14,850	
Henry Graves, jr., 30 Broad St., New York	9,000	4,000		13,000	
Potterton Bros., 49 Pine St., New York		12,000	700	12,700	
John B. Manning, 2 Wall St., New York	1,170	2,557	8,907	12,634	
J. W. Davis & Co., 100 Broadway, N. Y	284	300	11,750	12,084	
Baltzer Henckens, S. W. 125th St., N. Y		9,200	2,400	11,600	892
George F. Baer, Reading Terminal, Phila	7,638	387	3,622	11,874	
Horgans & Co., 2 Wall St., New York			11,400	11,400	
Moore & Ashley, 80 Broadway, N. Y			10,830	10,830	
Pearl & Co., 71 Broadway, New York			10,740	10,740	
Lehman Bros., 16 William St., N. Y	1,720	2,763	4,130	9,613	
Charles D. Barney & Co., 25 Broad St., New York			9,375	9,375	
Vivian Gray & Co., London, E. C., Eng			9,060	9,060	
George V. Cridin & Sons, Land Title Bldg., Phila			8,700	8,700	
S. Japhet & Co., London, E. C., Eng			8,110	8,110	
Hallo & Stiegitz, 30 Broad St., N. Y			7,975	7,975	
J. S. Bache & Co., 42 Broadway, N. Y		4	7,610	7,614	
Arthur Lipper & Co., 20 New St., New York		300	7,029	7,329	
Dexter F. Rumsey, Buffalo, N. Y			7,200	7,200	
Cornelius A. Lane, 1211 Clover St., Phila	400	1,700	5,000	7,100	
Strong, Sturgis & Co., 30 Broad St., New York			7,086	7,086	
Henry Graves, 30 Broad St., New York	1,000	6,000		7,000	
Emily A. Watson, 512 5th Av., N. Y	7,000			7,000	893
Stephen Sanford, Amsterdam, N. Y			6,954	6,954	
Henry Clews & Co., 25 Broad St., New York	68	200	6,250	6,518	
Kuch, Loew & Co., 7 Wall St., N. Y		20	6,250	6,270	
Geo. D. Widener est., Land Title Bldg., Phila			6,111	6,111	
James G. Kitchen, 8 Letitia St., Phila	900	2,700	2,500	6,100	
Geo. Eastman, Rochester, N. Y			6,000	6,000	
Park M. Woodley, 77 Spring St., N. Y			6,000	6,000	
Joseph A. Woodley, 77 Spring St., N. Y			6,000	6,000	
Edward H. Graves, 30 Broad St., New York	2,800	2,620		5,420	
M. C. Bouvier & Co., 20 Broad St., New York		100	5,275	5,375	
J. J. Danzig & Co., 100 Broadway, N. Y			5,300	5,300	
Shearson, Hamill & Co., 71 Broadway, N. Y		300	4,950	5,250	
S. B. Chapin & Co., 111 Broadway, N. Y	20		5,196	5,216	
Nathan Snellenburg, 12th & Market Sts., Philadelphia		200	5,000	5,200	
Wm. M. Potts, Wyebrook, Pa	1,000	2,100	2,000	5,100	
Frank W. McElroy, Frick Bldg., Pittsburgh, Pa			5,000	5,000	894
Florence A. V. Twombly, 684 5th Ave., N. Y	5,000			5,000	
Jos. E. Widener, Land Title Bldg., Phila			5,000	5,000	

895 Mr. Gordon offered in evidence the following list of the fifty largest stockholders of the Lehigh Coal and Navigation Company, furnished by the secretary:

List of largest stockholders of the Lehigh Coal & Navigation Company, January 31, 1914.

(Date of record for dividend No. 141 payable Feb. 28, 1914.)

	Regular stock.	Trustee certificate.
John E. Andrus, 4 Hudson Street, Yonkers, New York	250	2,500
Bioren & Co., 314 Chestnut Street, Philadelphia, Penna	880	6,280
M. Clementine Borie, 123 South 12th Street, Philadelphia, Pa	1,616	
Anna J. Bringhurst, Wilmington, Delaware		1,500
Edith C. Bryce, 52 William Street, New York	7,120	
William Cochran, B. Travis Cochran, and William G. Cochran, trustees under will of William C. Cochran, dec'd, care of the Penna. Co., Philadelphia, Pa		1,300
Richard Y. Cook, care of Guarantee Trust & S. D. Co., 318 Chestnut Street, Philadelphia, Pa		3,500
		1,200
896 Annette Cope, care of Girard Trust Company, Philadelphia, Penna		1,205
Caroline E. Cope, care of Girard Trust Company, Philadelphia, Penna		1,130
Peter E. Costello, 314 Arcade Building, 15th & Market Streets, Philadelphia, Penna	405	972
Robert H. Crozer, Keystone Hotel, 16th & Market Streets, Philadelphia	10	1,133
Joseph Henry Culin, Real Estate Trust Company, Philadelphia, Penna	200	1,800
R. L. Day & Co., 256 Congress Street, Boston, Mass		
George H. Earle, jr., the Finance Company of Penna., 424 Chestnut Street, Philadelphia, Penna	1,500	
George H. Earle, jr., Real Estate Trust Company, Philadelphia, Penna		11,707
Richard M. Elliot, North American Building, Philadelphia, Penna	100	1,185
John Farnum & Co., 255 Chestnut Street, Philadelphia, Penna	2,000	
Bernard N. Farren (estate), care of the Penna. Company, Philadelphia, Penna	2,141	222
Charles Fearon & Co., 331 Chestnut Street, Philadelphia, Penna		
897 Fidelity Trust Company, trustee under the will of Richard Smith, dec'd., Philadelphia, Penna	2,530	
Finance Company of Pennsylvania, 424 Chestnut Street, Philadelphia, Penna	600	2,640
S. M. & M. S. Fridenberg, 429 Chestnut Street, Philadelphia, Penna	201	970
Robt. Clendinning & Co., 400 Chestnut Street, Philadelphia, Penna	1,424	921
Daniel W. Grafly, 2008 W. Girard Avenue, Philadelphia, Penna		1,650
Hobart A. Hare, 1801 Spruce Street, Philadelphia, Penna		1,800
Henry R. Hatfield, 723 Walnut Street, Philadelphia, Penna		2,000
Hancke Heucken, 8 West 121st Street, New York City	1,200	823
James R. Hopkins, care of the Penna. Company, Philadelphia, Penna	100	1,020
James G. Kitchen, 55 N. Front Street, Philadelphia, Penna	1,450	
William A. Lathrop (estate), care of Peoples Bank of Wilkes-Barre, 13 Public Square, Wilkes-Barre, Penna	110	1,304
La Fayette Lentz, Mauch Chunk, Pennsylvania	838	987
Sarah A. C. Loyd, 1206 Filbert Street, Philadelphia		1,200
898 George D. McCreary, Market St. Natl. Bank, Philadelphia, Penna	196	1,954
Thomas McKean (estate), 303 Drexel Building, Philadelphia, Penna	19,987	
Charles Norris, Aldine Hotel, Philadelphia, Penna		1,870
The Pennsylvania Company for Insurances on Lives and Granting Annuities, fiscal trustee of the Williamson Free School of Mechanical Trades (endowment fund), Philadelphia, Penna	1,851	
William B. Phillips, Merion Cricket Club, Haverford, Penna	100	1,000
Lewis A. Riley, Lafayette Building, 5th and Chestnut Streets, Philadelphia, Penna	20	11,625
Ringwood Company, 50 Church Street, New York City	1,068	1,203
Charles John Sheepshanks, Stokelake House, Churleigh, S. Devon, England		1,256
Charles K. Smith, 123 Arch Street, Philadelphia, Penna		2,200
Edward B. Smith & Co., Broad and Chestnut Streets, Philadelphia, Penna		5,000
Sullivan Brothers & Co., Real Estate Trust Bldg., Philadelphia, Penna	849	950
899 Jeremiah J. Sullivan, 1910 Walnut Street, Philadelphia, Penna	138	1,380
Nathan Trotter, 36 N. Front Street, Philadelphia, Penna	677	482
Verner & Co., 203 North American Building, Philadelphia, Penna		4,940
Sarah D. Wells, 1131 Spruce Street, Philadelphia	510	1,120
John S. Wentz, 1723 Land Title Building, Philadelphia, Penna	15	1,211
Mary D. Wentz (estate), Land Title Building, Philadelphia		1,633
West End Trust Company, Philadelphia, Pennsylvania		7,901
J. Fred Zimmerman, 918 N. Broad Street, Philadelphia, Penna	1,200	

900 Mr. GORDON. I also read in evidence a statement prepared by Mr. Samuel Dickson in response to a request by the board of managers of the Lehigh Coal and Navigation Company, together with the resolution in response to which it was furnished.

Mr. REYNOLDS. The Central Railroad Company of New Jersey notes an objection to the receipt of any such opinion or construction of the lease as that. The lease is in evidence and speaks for itself, and the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company both object to any ex parte interpretation put on it by the other party to the contract.

On behalf of the Reading Companies, also note an objection to the receipt as evidence of any ex parte interpretation of the meaning of formal contracts, and a construction of them, as being substitutionary evidence of what the contracts mean, and inadmissible on any theory of evidence.

The statements offered are as follows:

[*Copy of resolution adopted by the board of managers of the Lehigh Coal and Navigation Co., November 4th, 1901, in accordance with which the following letter was written:*]

On motion the following resolution was adopted:

"*Resolved*, That the president and counsel and finance committee be requested to prepare a brief statement to be placed upon our minutes, showing the rights and obligations now existing beween this company and the Central Railroad Company of New Jersey." 901

[*The following statement is incorporated in the minutes immediately after the above resolution, as provided in the resolution itself:*]

PHILADELPHIA, *November 11th, 1901.*

LEWIS A. RILEY, Esqr.,
President, 108 South Fourth Street, Philadelphia.

DEAR SIR: In view of the discussion at the last meeting of the board, and of the resolution then adopted, I submit a summary of the important provisions of the contracts between the Lehigh Coal and Navigation Company, and the Central Railroad Company of New Jersey, in reference to the Lehigh and Susquehanna Railroad, with some explanations of the reasons which led to the adoption of certain clauses in the agreements of 1883 and 1887.

The original agreement of March 31st, 1871, was substantially equivalent to what is known as a lease on shares, and the duty of the lessee is declared, in the fifth article, to be that the demised premises shall be so worked and maintained by the parties of the second part as to secure the largest amount of revenue possible therefrom. At that time the only adverse influence considered was that of the Lehigh Valley Railroad Company, and hence the clauses upon that subject. The other stipulations relate to the transportation of coal, and were intended to secure all the tonnage which the Central Railroad Company of New Jersey or the Wilkes-Barre Coal and Iron Company could furnish. The lessee having assumed the duty of maintaining the railroad in good order and repair, it was further agreed that all additions should be made at the expense of the navigation company. 902

As the two companies had a common interest in the development of the business, no question could arise except as to the propriety and cost of proposed expenditure.

In 1883 the Reading Company took a lease of the Central Railroad Company of New Jersey, and the counsel of the navigation company advised that not only was the contract of 1871 essentially personal, giving no right of assignment to a stranger, but that it created substantially a partnership with the Central Railroad Company as the managing partner; and that the duty of operating the railroad to the best advantage could not be transferred to another company having an adverse interest; and that as it might prove to be to the interest of the Reading Company to develop its own coal mines in preference to those of the Lehigh and Wilkes-Barre Company, and generally to subordinate the Lehigh and Susquehanna Railroad to the lines of which it was the owner, the navigation company could enjoin the transfer of the Lehigh and Susquehanna Railroad. The then president of the navigation company, Mr. Harris, submitted these views to Mr. Gowen, who acquiesced in their fairness, and as the result of protracted negotiations the agreement of May 29th, 1883, was exe-
903 cuted. The original agreement of 1871 was reaffirmed, and in the third section the Reading Company entered into stipulations which fully protected the interests of this company. It bound itself to develop the business of the railroad, in accordance with the provisions of the agreement of 1871; to cause additional railroads to be built under the terms of the contract; and to cause the development of the Lehigh and Wilkes-Barre Coal Company's lands to proceed *pari passu* with that of the lands of the Reading Coal and Iron Company, so as to maintain the then existing ratio. By the fourth section it agreed that the minimum rental should never be less than $1,414,400, and having consented to this suggestion, Mr. Gowen responded by asking that a maximum should be named, and this was agreed to and fixed at $2,043,000, "together with a further sum in each year equal to 7 per cent upon the amounts which shall be charged after December 31st, 1882, upon the books of the Lehigh Coal and Navigation Company for payments for right of way or for expenditures made or to be made by the Central Railroad Company of New Jersey or the Philadelphia and Reading Railroad Company for construction, as shown by the accounts rendered or to be rendered by either of said corporations under the first and second mutual covenants of the agreement of March 31st, 1871." In this connection it should be noted that a still further sum is to be added to the maximum rental of the Lehigh and Susquehanna Railroad, as defined by clause 4 of the agreement of July 10th, 1889, between the Lehigh Coal and Navigation Company and the Central Railroad of New
904 Jersey, respecting their relations to the Allentown Terminal Railroad Company.

Receivers of the Philadelphia and Reading Railroad were appointed in 1884, who retained possession of the Central Railroad of New Jersey and of the Lehigh and Susquehanna Railroad until the latter part of 1886. Upon a bill filed in the Circuit Court of the United States for the Western District of Pennsylvania, in the latter part of 1886, John S. Kennedy and Joseph S. Harris were appointed receivers of the Central Railroad Company of New Jersey, and the receivers of the Philadelphia and Reading Railroad Company surrendered possession

to them upon the first of January, 1887. Notice of the application having been given to the Navigation Company, a bill was filed by that company asking that it might be decreed that the lease had terminated or else to declare its terms. Of course this action was only, or mainly, taken by way of precaution; and after protracted negotiations, the agreement of June 28th, 1887, was executed, whereby it was agreed that the Lehigh and Susquehanna Railroad should thereafter be held by the Central Railroad, under the terms of the original deed of March 31st, 1871, as modified by that of May 29th, 1883, and by the agreement then made, and all covenants on the part of the Reading Company in the deed of 1883 were to be taken as made and assumed by the Central Railroad Company of New Jersey, except as therein specified. As to the Lehigh and Wilkes-Barre Coal Company, it was agreed that the development should be caused to proceed so 905
that the lands should produce at least five and one-half per cent of the total production of the anthracite field after December 31st, 1896, so long as possible to do so. The Wilkes-Barre and Scranton road was included, and it was also agreed, that if required, the navigation company should take possession and operate the Lehigh and Susquehanna Railroad under the terms of the contracts; and in consideration of the payment of the bonds of the gold loan, assumed by the Central Railroad Company of New Jersey, the navigation company agreed to pay the balance due on construction account and thereafter repay such expenditures in twelve months from the end of the year in which they should have been made.

In February, 1892, the Reading Railroad Company took a lease of the properties of the Lehigh Valley Railroad and of the Central Railroad Company of New Jersey. In order to avoid the legal objections to a lease to itself directly, the lease of the Central Railroad was taken by the Port Reading Railroad Company. It was agreed by all counsel concerned that the Navigation Company should not itself become a party to the lease of the Central Railroad Company, as its railroad was clearly parallel to that of the Lehigh Valley Company and manifestly within the prohibition of the constitution, and the necessary safeguards to prevent the diversion of business and to insure the reasonable development of the traffic had, therefore, to be inserted in the stipulations made with the Central Railroad Company of New Jersey, under its contract with the Port Reading Company. 906

The lease of the Central Railroad to the Port Reading Railroad Company, dated February 12th, 1892, and the tripartite agreement of even date therewith, between the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company, and the Port Reading Railroad Company are no longer in force, as the whole arrangement was declared void by the chancellor of New Jersey; but these contracts of 1892 are of inestimable importance to this company at this time, in view of the fact that the Reading Company is now the owner of a majority of the capital stock of the Central Railroad Company of New Jersey, and under the same temptation to subordinate the business of the Lehigh and Susquehanna Railroad to its own interests, as might have influenced that company when in possession of the property under the lease of 1883 or of 1892, and the lease and tripartite agreement of 1892 contain a clear and satisfactory statement of the manner in which the Lehigh and Susquehanna Railroad should be operated, which statement was then conceded by the

Central Railroad and the Philadelphia and Reading Railroad Companies to be a fair and equitable expression of the respective rights and duties of the parties then and now in interest.

The ninth article of the lease bound the Port Reading Company to perform all the obligations of the Central Company under the provisions of the agreements of 1871, 1883, and 1887, which were thereby
907 reaffirmed, and it was further declared that "the interpretations and usages at present in force are to be accepted as settling and determining the constructions thereof." This last clause is of great importance and value, as it may safely be relied upon to prevent the reopening of any question which has been heretofore settled by express agreement or usage. The tenth section virtually increased the minimum to $1,800,000, by providing that the total gross receipts should not be less than $5,100,000, and further providing that after December 1st, 1895, the total should not be less than $5,750,000. These provisions are no longer in force.

There then followed, in the eleventh article, very careful provisions as to the way in which the traffic should be routed, effectually guarding against the diversion of business, and for the maintenance of a sufficient passenger service so as to prevent discrimination in favor of the Lehigh Valley Railroad. The tripartite agreement contained more detailed provisions in reference to the routing of the traffic, so as to secure at least all the traffic then tributary to or passing over said lines, with a further obligation to augment the same in proportion to the general increase of traffic in the territory occupied. A further clause that the Port Reading Company should procure all business to be exchanged between points on the Reading system of railroads and its connections and the Central system and its connections to be routed by the most direct lines formed or that could be
908 formed out of existing members of these systems as then (now) constructed, can not now be insisted upon, but is still valuable as showing what was thought reasonable at that time.

Simultaneously with the delivery of the lease and tripartite agreement this company and the Central Company entered into a supplemental agreement to the effect that the execution of the lease to the Port Reading should not affect the obligations of the Central Company to perform all the covenants in the agreements of 1871, 1883, and 1887, nor the right of the Lehigh Company to object to any future transfer or assignment of its rights relative to the Lehigh and Susquehanna Railroad, and agreeing that in case the Central Company should desire the Lehigh and Susquehanna Railroad to be operated by the Lehigh Company, it would do so as stipulated in the agreement of 1887. Under the same date, an agreement was entered into between this company and the Lehigh and Wilkes-Barre Coal Company, renewing and enlarging the agreement with the Wilkes-Barre Coal and Iron Company of 1870, and binding the coal to be mined and transported from the lands of the Lehigh and Wilkes-Barre Coal Company and of the Alliance Coal Mining Company to the Lehigh and Susquehanna Railroad, it being the understanding at that time that the Lehigh and Wilkes-Barre Coal Company would acquire a half interest in the Alliance Coal Mining Company. The Central Railroad Company was also a party to this agreement, and it is declared that the true intent and meaning of this agreement is to continue the policy heretofore pursued by the parties hereto as

evidenced by the existing agreements, and to cement their interests 909
indissolubly, so that they may mutually protect and defend each other and may successfully resist any effort to sever them.

It may be said, with reasonable confidence, that the result of these successive agreements is to secure to the Lehigh and Susquehanna Railroad the transportation of all the coal which can be mined by the Lehigh and Wilkes-Barre Coal Company, the Alliance Coal Mining Company, or the Central Railroad Company of New Jersey, from lands owned or controlled by them or any of them; and to insure the development of the coal properties of these companies *pari passu* with the remainder of the anthracite field until the product shall be equal to at least five and one-half per cent. of the total output. It is also clear that the Reading Company, as the owner of a majority of the capital stock of the Central Railroad Company, is under all the obligations of a managing partner to develop what may be called the firm business to the greatest possible advantage, and that any attempt to divert the business or to subordinate the interests of the Lehigh and Susquehanna Railroad to its other lines could be successfully enjoined. Fortunately, the full measure of duty in these respects is clearly declared and defined in the successive agreements to which reference has been made, and there is no reason to apprehend that under the present management of the Reading Company there will be any disposition to evade or ignore the obligations devolving upon it. In fact, so soon as the maximum shall have been reached, it will be to the interest of the Reading Company to 910
route all the business over the Nesquehoning Branch of the Lehigh and Susquehanna Road, which it can transport more cheaply than by the way of Reading. It is reasonable, therefore, to anticipate that so soon as the maximum shall have been reached there will be such an addition to the business of the railroad as to make that figure secure, and it will probably be unnecessary to rely upon the specific clauses of any agreement other than that relating to the maximum rental. This is fixed by the contract of 1883 at $2,043,000, together with a further sum in each year equal to seven per cent. upon the advances for rights of way and construction.

It has been suggested that this would be held to mean seven per cent upon the advances from the time they were made, but the clause in effect makes an addition to the maximum rental to be paid in any calendar year. It is not seven per cent interest, but a sum equal to seven per cent upon the amount charged upon the books of this company. Under the original lease it was the apparent understanding of the parties that while the lessee assumed the burden of maintenance the lessor was obliged to provide for additions which presumably would increase the earning power and give a return in the one-third share of the gross receipts. When the maximum rental was reached the lessor would no longer get the benefit of disbursements made on account of construction in its share of the rental to which it was entitled, and hence, as a substitute, it was provided that 911
in any year in which the one-third should equal the maximum sum named the lessor should be entitled to have, not interest upon his advances, but a further sum equal to seven per cent upon the amounts charged upon its books. Until it has received this amount the lessor continues to get its one-third of the gross receipts, and thereby gets

compensation for the expenditures it has made in the permanent improvement of the railroad property.

It is to be noted also that the obligation to pay the seven per cent does not arise until the maximum has been reached, and if it never should be reached the Central Company would never be under any liability on that account. This confirms the view that it is only a liability equal to seven per cent in the particular year in which the one-third of the gross earnings exceeds $2,043,000.

(Sd.) SAML. DICKSON.

*935 Mr. GORDON. I would like to make a call on the record for the following agreements, which are referred to in the foregoing statement, to be inserted in the record at this point and furnished by counsel for the defendants:

1. The lease of the Central Railroad Company of New Jersey to the Port Reading Railroad, dated February 12, 1892. (See p. 438.)

2. The tripartite agreement of the same date between the Central Railroad Company of New Jersey, the Philadelphia & Reading Railroad Company, and the Port Reading Railroad Company. (See p. 453.)

3. The supplemental agreement of the same date, entered into simultaneously with the delivery of the foregoing lease and tripartite agreement, between the Central Railroad Company of New Jersey and the Lehigh Coal & Navigation Company. (See p. 462.)

4. The agreement of the same date between the Lehigh Coal & Navigation Company and the Lehigh & Wilkes-Barre Coal Company, renewing and enlarging the agreement between the Wilkes-Barre Coal & Iron Company of 1870 and binding the coal to be mined from the lands of the Lehigh & Wilkes-Barre Coal Company and the Alliance Coal Company to the Lehigh & Susquehanna Railroad. (See p. 464.)

935½ The agreement of 1870, referred to in agreement No. 4, just called for, between the Lehigh Coal & Navigation Company and the Wilkes-Barre Coal & Iron Company. (See p. 466.)

936 Following are copies of the leases and agreements called for by Mr. Gordon and furnished by counsel for defendants:

LEASE.

The Central Railroad Company of New Jersey to the Port Reading Railroad Company, dated February 12th, 1892.

Whereas, The Central Railroad Company of New Jersey, and The Port Reading Railroad Company, in pursuance of the Laws of the State of New Jersey, and of every other power and authority them in that respect enabling, have agreed that the railroads of the said The Central Railroad Company of New Jersey shall be leased to the Port Reading Railroad Company, and shall be run, used and operated by the latter company, upon the terms and conditions hereinafter set forth:

* So numbered in original.

Now this Indenture, made this 12th day of February, 1892, by and between the Central Railroad Company of New Jersey, hereinafter called the Central Company, and the Port Reading Railroad Company, hereinafter called the Port Reading Company, witnesseth:

That for and in consideration of the covenants and agreements of the Port Reading Company hereinafter contained, and of the sum of one dollar ($1) to the Central Company in hand paid by the Port Reading Company, the receipt whereof is hereby acknowledged, the Central Company doth hereby let and demise to the Port Reading Company, its successors and assigns, for the term of nine hundred and ninety-nine (999) years, the entire railroad of the Central Company, as the same is now located and constructed, or as the same may be hereafter located and constructed, in pursuance of any and every lawful authority now existing, or which may hereafter exist; together with all its right to construct, maintain and operate the following described railroads, whether such right is acquired by virtue of any lease, contract or otherwise, viz.: 937

The Central Railroad of New Jersey, including its following branches:

The Newark and New York Branch,
The Manufacturers' Branch,
The Elizabethport and Perth Amboy Branch,
The Elizabethport Loop,
The Bayway Branch,
The Tremly Branch,
The Newark and Elizabeth Branch,
The Constable's Hook Branch,
The South Branch,
The High Bridge Branch,
The Longwood Valley Branch, and
The Lake Hopatcong Branch;
The Allentown Terminal Railway (subject to the provisions of all existing agreements respecting the same);
The Buena Vista Railroad;
The Carteret and Sewaren Railroad;
The Carteret Extension Railroad; 938
The Cumberland and Maurice River Railroad;
The Cumberland and Maurice River Extension Railroad;
The Dover and Rockaway Railroad;
The Elizabeth Extension Railroad;
The Freehold and Atlantic Highlands Railroad;
The Hibernia Mine Railroad;
The Hudson and Communipaw Railroad;
The Lafayette Railroad;
The Lehigh and Lackawanna Railroad;
The Lehigh and Susquehanna Railroad;
The Manufacturers' Extension Railroad;
The Nanticoke Railroad;
The Navesink Railroad;
The Nesquehoning Valley Railroad;
The New Jersey Southern Railway, including the former Long Branch and Sea Shore Railroad;
The New York and Long Branch Railroad;
The Ogden Mine Railroad;

The Passaic River Extension Railroad;
The Toms River Railroad;
The Toms River and Waretown Railroad;
The Trescow Railroad;
The Union Coal Company's Railroad;
The Vineland Railroad;
The West End Railroad;
939 The Wilkesbarre and Scranton Railroad; and
The Wind Gap and Delaware Railroad;

subject as to any of the above-named railroads which are leased, to the payment of the rentals thereof, and subject as respects the New York and Long Branch Railroad, to the agreement between The Central Railroad Company of New Jersey, The New York and Long Branch Railroad Company, The New Jersey Southern Railway Company, and The Pennsylvania Railroad Company, dated January 2, 1888, and the payment of rental therein provided.

Together with all branches, laterals, extensions, sidings, turnouts, tracks, bridges, viaducts, culverts, rights of way, water rights and privileges, all lands, shops, machinery, fixtures, depots, stations, water stations, houses, buildings, structures, improvements, tenements and hereditaments of whatever kind or description and wherever situate, appertaining to the operation, maintenance and renewal of the said railroads which are now held, leased or owned by the Central Company, or which may at any time hereafter during the term of this demise be acquired by the Central Company, for railroad purposes, by the request of the Port Reading Company, pursuant to the betterment clause of this lease: And together with all the ferries and rights of ferriage now belonging to or which may hereafter be acquired for the purposes aforesaid by the Central Company; Also all the engines (stationary and locomotive), cars, tenders, trucks and other rolling stock, tools, implements, machines and personal property of every
940 kind and description in use or intended or adapted for use upon or about the railroads and premises demised or the business thereof, including all ferryboats, steamboats, tugs, floats, barges and other vessels belonging to the Central Company; it being the intention and agreement of the parties hereto that all cars and other rolling stock now used by or in possession of the Central Company under the terms of any car trust, shall, when and so soon as they shall become the property of the Central Company, and to the extent of the interest of the Central Company therein, be included in the terms of this lease. And all rights, benefits and privileges of every nature whatsoever now enjoyed or which may hereafter be enjoyed by the Central Company relating and appertaining to the demised property.

Also all the rights, powers, franchises (other than the franchise of being a corporation) and privileges which may now or at any time hereafter during the aforesaid term be lawfully exercised or enjoyed in or about the use, management, maintenance, renewal, extension, alteration or improvement of the railroads, premises or appurtenances above demised: Together with all rights now enjoyed by the Central Company to the lines of telegraph now existing, or as the same may hereafter exist along the line of said railroads or their branches, or any extension thereof.

Excepting and reserving, nevertheless, out of the demised premises the building and its contents, situated at the corner of Liberty and

West streets, in the City of New York, known as the "Central Build- 941
ing." Also excepting all other real estate owned or held by the said Central Company, which is not adjacent to said railroads, or, if adjacent, is not used or required for the purposes of the business of the demised railroads and their appurtenances; provided, moreover, that as to all real estate included in this lease acquired, but not presently used for railroad purposes, the same though forming part of the demised premises, shall remain in the possession of the Central Company, and the income of any parcels thereof which may be leased or may be otherwise income producing remaining after payment of taxes on such parcels, shall belong to the Central Company until so required, but that when so required, possession thereof shall be delivered over to the Port Reading Company, who shall thereafter use and enjoy the same under the provisions of this lease. No such property shall be hereafter leased by the Central Company for a longer term than three years at any one time without the previous consent of the Port Reading Company, and the obligation of the Central Company to surrender possession of the property shall be subject to the terms of any lease relating thereto in force when such property is so required.

A schedule of the real estate used or required for railroad purposes and included in this lease shall be made and signed as soon as may be practicable.

To have and to hold the premises thus leased and demised unto 942
the Port Reading Company, its successors and assigns, for the full term of nine hundred and ninety-nine years from the date hereof, so far as the same are owned by the Central Company, and so far as the same are held under lease by the Central Company for the said full term of nine hundred and ninety-nine (999) years from the date hereof, or, with reference to each leased estate so sub-let, for the period (within the limit of the term hereof) for which the said Central Company shall be entitled to sub-let the same.

And in consideration of the premises, the parties hereto do hereby covenant and agree as follows, each party covenanting for itself, its successors and assigns, with the other, its successors and assigns:

First. That the Port Reading Company shall, and will, pay to the Central Company, as is hereinafter specified, during the said term, as rent for the premises hereby demised, the following sums:

(a.) Such sums as will enable the Central Company to pay and discharge all interest, dividends, rentals, guarantees and all other charges which it is now or may at any time hereafter be obliged in any manner to pay. A schedule of the present fixed charges, other than taxes, is to be made, and when duly certified and signed, shall form part of this agreement.

Payment of the said various sums, based upon estimates to be 943
made by the Central Company at the beginning of each year, shall be made in equal monthly installments during the said term on the first day of each month, and the first payment for the year 1892 shall be made as of the first day of February, 1892.

And the Central Company hereby expressly covenants to apply the above said sums to the payment of the said interest, dividends, rentals guarantees and other charges accruing from time to time upon the stocks, bonds, leases, guarantees and obligations of the Central Company which are hereinbefore referred to.

Provided, however, and it is hereby expressly understood and agreed that if a reduction or an increase in the rate of interest upon any of the outstanding obligations hereinabove mentioned shall at any time be effected, whether by extension of the time of payment of the principal thereof, or by an exchange of existing bonds for bonds bearing a less or greater rate of interest, or otherwise howsoever, or if any reduction or increase shall be effected in the rental of any leased roads, or in any other charges now payable by the Central Company, then the sums payable by the Port Reading Company as above mentioned shall be reduced or increased by an amount equal to the reduction or increase in the said interest, rentals or other charges.

944 Provided, further, however, that if at any time hereafter any part of the issue of convertible Debenture Bonds shall be converted into stock, such stock thereafter shall be treated as though in existence at the time of making this lease, and the payments to be made shall be changed accordingly.

Provided, nevertheless, and it is hereby further expressly understood and agreed, that no reduction in the sum applicable to the payment of interest upon the five million ($5,000,000) dollars of bonds issued by the American Dock and Improvement Company shall take place in consequence of the payment of any part of the principal of the said bonds, from the proceeds of the sale of property of the said Dock Company, which may be applied thereto, so long as the annual receipts of the said Dock and Improvement Company shall be insufficient to pay and discharge all taxes, expenses and other charges payable by it; but that the benefit of any such reduction shall enure to the said Dock and Improvement Company so long as and to the extent that it shall be needed for the discharge of taxes, expenses and other charges which cannot be liquidated by its receipts.

(b) And a further sum in each and every year which shall be equal to seven per centum per annum upon the present outstanding capital stock of the Central Company, including as such outstanding stock any stock hereafter issued under the obligations of its convertible Debenture Bonds hereinbefore mentioned, which sum shall be paid in equal monthly installments on the 1st day of each month of each and every year during said term, commencing as of the 1st day
945 of February, 1892; it being further understood and agreed that any interest which may hereafter be paid by the Lehigh and Wilkes Barre Coal Company in any year for interest due in such year upon its six million one hundred and sixteen thousand ($6,116,000) dollars Consolidated Mortgage Bonds deposited with the Trustee of the General Mortgage of the Central Company, or any bonds issued in payment thereof or in substitution therefor, shall be credited to the Port Reading Company as part of the earnings of the demised premises for such year.

(c) And a further sum, equal to 50 per centum of the surplus earnings over the 7 per centum above stipulated, which shall have accrued to the Port Reading Company during each calendar year of the term of this lease from all the trade, traffic, business and income of the demised premises. Provided, however, that no amount shall be payable to the Central Company as its share of such surplus earnings in excess of a sum equal to three per centum additional upon the said outstanding capital stock of the Central Company,

including as such outstanding stock any stock hereafter issued under the obligations of its convertible Debenture Bonds hereinbefore mentioned.

Payment of the said last-mentioned amount shall be made in one annual payment at the end of each year during said term, the first payment to be made on the first day of January, 1893, and annually thereafter on each first day of January. But in case it shall not be practicable to exactly determine said amount the same shall be 946
estimated and the estimated amount shall be paid, and the exact amount thereafter adjusted and paid as soon as the same shall be ascertained.

And provided, further, and it is hereby further expressly covenanted and agreed that the words "surplus earnings" shall be held to signify the sum remaining of the total gross receipts, earnings and income of the said demised premises during each fiscal year ending December 31st, after deducting therefrom all expenses of maintaining, operating, renewing, replacing and repairing the said demised premises, which shall be necessary for the safe, proper and economical operation of the same, and also taxes and the fixed charges named in paragraph *a* of this article. In computing said expenses the same rules which have been applied between expense and capital accounts by the Central Company for the years 1890 and 1891 shall be observed as nearly as may be possible.

Second. That the Port Reading Company shall and will, during the continuance of the term hereby demised, assume the payment of, and punctually and faithfully pay all taxes and assessments upon the capital stock of the Central Company, upon the yearly payments herein agreed to be made by the Port Reading Company to the Central Company, and upon the dividends declared and paid by the Central Company to its stockholders out of the said yearly rent, for the payment or collection of which taxes or assessments the Central Company would be otherwise liable or accountable under any lawful 947
authority whatever.

Provided, however, that nothing in this covenant contained shall require the Port Reading Company to pay for any one year a greater amount of taxes or assessments on the capital stock of the Central Company than the amount that would be chargeable or assessable for such year upon the present outstanding capital stock of the Central Company together with so many shares as may be issued at not less than par by the Central Company in accordance with the terms of this agreement, whether for improvements or pursuant to the obligations of its Convertible Debenture Bonds, nor any greater amount of taxes or assessments on dividends than the amount that would be chargeable or assessable on a dividend or dividends at the rate which may be payable out of the rent hereinbefore provided;

And provided further, that nothing herein contained shall be construed as rendering the Port Reading Company liable or responsible for taxes or assessments on any dividend or part of dividend paid by the Central Company out of any other funds than the aforesaid yearly rent, and any dividend or part of dividend for the tax on which the Port Reading shall not be liable or responsible as aforesaid, shall be disregarded in computing the amount of tax payable by the Port Reading Company.

Third. That the Port Reading Company shall and will punctually and faithfully pay all taxes, charges, levies, claims, liens, and assessments of any and every kind which, during the continuance of the
948 term hereby demised shall, in pursuance of any lawful authority, be assessed or imposed on the demised premises, or any part thereof, or upon the business there carried on, or the receipts, gross or net, therefrom or upon the franchises of the said Central Company; and also any taxes, charges or assessments in respect to either the principal or interest of bonds or obligations of the Central Company, the interest of which shall be paid out of the rent aforesaid, which, in pursuance of any lawful authority, the Central Company shall in itself be required to pay without recourse to the parties to whom such interest is paid, whether such recourse shall not be allowed by the provisions of the statute, ordinance or enactment imposing or authorizing such tax, charge or assessments, or shall have been waived or released by any now existing agreement of the Central Company in respect thereto.

And all other payments required to be made by the Central Company during the term of this indenture, and not herein otherwise specially provided for, shall be assumed and discharged by the Port Reading Company, as if the Port Reading Company were primarily liable for the same.

Provided, however, that the Central Company shall have the option at any time hereafter to require the Port Reading Company to pay to it an amount equal to the taxes and charges assumed by the Port Reading Company in this and the immediately preceding article of this agreement. Such amounts shall be payable at the date on which such taxes and charges are due. The Central Company hereby covenants and agrees to apply such amount to the payment
949 of said taxes and charges. Nothing herein contained, however, shall prevent the Port Reading Company from contesting any illegal taxes.

Fourth. That the Port Reading Company shall and will during the continuance of the hereby demised term, keep and maintain the said demised railroads and appurtenances, buildings, structures and fixtures in at least as good order and repair as they now are, and continue a line of insurance thereon not less than the amount now in force, and distributed in like proportion over different parts thereof, until and unless the same shall be reduced by mutual consent; keep in public use, manage and efficiently operate the said railroads, from time to time and at all times indemnify and save harmless the said Central Company from all liabilities, damages, claims and suits by reason of anything done or omitted by the Port Reading Company in the premises, and, at the expiration or other determination of the hereby demised term, surrender the said railroad and premises in at least the same good order and condition as they now are.

Fifth. That the Port Reading Company shall and will, during the continuance of the term hereby created, provide and maintain, and from time to time cause to be provided, under the betterment clause of this lease, as the same may be required, station and terminal facilities for the receipt, shipment and handling of all traffic over the lines of the Central Company, and that it shall and will keep and maintain in use on the railroads hereby demised an adequate equipment of
950 rolling stock, ferryboats and other floating equipment, machinery, tools and other equipment adapted for railroad business and sufficient for the growth of the business of the Central System, and that the

rolling stock, ferryboats and other floating equipment, machinery, tools and other equipment in use on the said railroad shall at all times be equal in amount and value to the said equipment hereby leased, and any additions thereto paid for as betterments by the Central Company; that is to say, that there shall be at all times in use on the Central Railroad and marked and designated as belonging thereto so as to identify and distinguish the same as the property of the Central Company, no less than the same number of locomotives, and no less than the same number of passenger cars, and no less than the same number of ferryboats and other floating equipment, machinery, tools and other equipment as are now in use upon the same, adding thereto such equipment as may be paid for hereafter by the Central Company as betterments, and all of the said equipment shall always be kept up to standard types, and shall always be fully adapted to the use of first-class traffic, and that there shall be at all times on said railroads the same tonnage of freight and coal cars as is now in use, and any additions thereto paid for as betterments by the Central Company of the then standard type and fully adapted for the transaction of business by the most approved methods; and that upon the expiration or sooner determination of the term of this lease, the Central Company shall be put in possession of such locomotives, 951
passenger cars, freight cars, ferryboats and other floating equipment, machinery, tools and other equipment as above provided, all of which shall be at least of equal value to those hereby leased, including any additions thereto. There shall be an annual inspection of the said rolling stock and equipment by an expert to be appointed by the Central Company. For the better securing to the Central Company of the full performance of this covenant, an inventory of the said rolling stock and other personal property leased shall be forthwith made, and the said rolling stock and personal property shall be appraised at its fair market value by three appraisers, one to be selected by each of the parties hereto, and the third by the two thus selected, and the said inventory and appraisement shall be identified by the respective signatures of the Presidents of the parties hereto, and shall be considered part of this agreement.

Sixth. The Port Reading Company shall and will during the continuance of the hereby demised term keep up and maintain the present carshops, repair shops and works and plant of similar character, of every description, or such other shops, works and plant as may with the consent of the Central Company be substituted therefor, including all tools, machinery, fixtures and appliances of any kind whatsoever, therein and thereabout, in the condition the same now are, and for the better securing to the Central Company the full performance 952
of this covenant, an inventory of the said tools, machinery, fixtures and appliances shall be forthwith made, together with all tools and appliances used on or about the demised premises, and the same shall be appraised at their fair market value by three appraisers, one to be selected by each of the parties hereto and the third by the two thus selected, and the said inventory and appraisement shall be attested by the signatures of the said appraisers and be considered part of this agreement, and that, upon the expiration or sooner determination of the term of this lease, the Central Company shall be put in possession of personal property of similar character and of value equal to that herein leased to the Port Reading Company.

Seventh. All additions, extensions, betterments and improvements to, of or upon the premises hereby demised, or their appurtenances, including any new rolling stock or floating or other equipment, and also including any new lines of railroad connecting therewith, whether constructed under the charters of the parties hereto or otherwise, shall be made as follows:

1. The Central Company shall have the prior right at its option to provide or procure to be provided the same or any part thereof; and to enable it to exercise such prior right, the Port Reading Company shall in all cases request in writing the particular addition, extension, betterment or improvement desired.

953 2. Should the Central Company, after receiving such request, refuse or neglect for a period of thirty days to take necessary action thereon, the Port Reading Company may otherwise provide or procure such additions, extensions, betterments or improvements.

The Central Company shall pay the cost of additions, extensions, betterments or improvements provided or procured by it upon the request of the Port Reading Company, and to pay therefor, may at its option issue bonds bearing interest at a rate not exceeding five per centum per annum, or shares of its capital stock, and thereafter the rent payable by the Port Reading Company to the Central Company shall be increased by a sum equal to five per centum per annum upon the cost of such additions, extensions or improvements.

Such additions, extensions, betterments and improvements provided or procured by the Central Company upon the request of the Port Reading Company, shall form part of the demised premises, subject to all the covenants of this lease.

Provided, however, that nothing herein contained shall prevent the Central Company from providing or procuring any such additions, extensions, betterments or improvements, without any request from the Port Reading Company, and from receiving the income thereof; subject, however, to the right of the Port Reading Company, within one year from the completion thereof, to request that they be made part of the demised premises, after which request the rental aforesaid shall be increased by a sum equal to five per centum upon the cost thereof, with interest at the rate of five per cent from the 954 time of completion until such request is made by the Port Reading Company.

This clause shall be designated and referred to as the "betterment clause of the lease."

Eighth. The Port Reading Company shall keep full, true and accurate accounts, and make reports and statements thereof, to the satisfaction of the Central Company, of all the business, receipts and revenues derived from the conduct of the operations of the said demised premises, which together with the data upon which the same are based and copies of all contracts relating thereto shall at all times be furnished to the Central Company, and all records and papers relating to the maintaining and operating of the demised premises shall be open to the inspection of the proper officer or officers of the Central Company, duly appointed for that purpose, who shall have liberty to make extracts from the same for the information of the officers and directors of the Central Company. Provided, and it is hereby expressly understood, covenanted and agreed that the gross receipts and charges properly applicable to the premises hereby

demised, as between the parties hereto, or between the Central Company and any other railroad companies whose lines may connect with the railroads hereby demised, and between which traffic may be interchanged, shall be calculated upon the basis of division which now prevails in respect to traffic now interchanged between the lines of the said parties, or between the same or either of them and other connecting lines, including any allowances for arbitraries and for 955
terminal charges, and that such basis shall not be changed at any time without the mutual agreement of the parties hereto, in writing, and if any case shall arise at any time in which the basis of division of receipts and charges now in force shall not be strictly applicable, the rules and principles upon which the proper parts of such receipts and charges are now applied to the premises hereby demised shall be followed as nearly as may be, until the parties hereto shall have agreed upon and fixed the basis of such new case or cases.

Ninth. That the Port Reading Company shall and will assume and well and faithfully perform all the obligations of the Central Company under all contracts made by it, so far as they relate to the demised premises, or any part thereof, or the traffic connected therewith, including all contracts for new equipment made previous to the date hereof, and all contracts relating to the Navesink Railroad; and in particular it is distinctly understood and agreed that the provisions of the agreements of March 31, 1871, May 29, 1883, and June 28, 1887, and all other existing agreements with The Lehigh Coal and Navigation Company, or in which it may have an interest, relating to the use and operation of the Lehigh and Susquehanna Railroad and branches, as herein defined, or to any other matter connected therewith, except as now otherwise provided, be and the same are hereby reaffirmed, accepted and assumed as fully as if herein repeated 956
at length, and the interpretations and usages at present in force are to be accepted as settling and determining the construction thereof.

Tenth. That the Port Reading Company will cause or procure business to be transported over the Lehigh and Susquehanna Railroad and branches, so that the gross receipts thereof shall never in any year, after December 31, 1891, be less than five million four hundred thousand ($5,400,000) dollars, and so that after December 31, 1895, they shall never be less in any year than five million seven hundred and fifty thousand ($5,750,000) dollars, the maximum rental remaining the same as fixed in the agreement of May 29, 1883, and June 28, 1887, and the agreement of July 10, 1889, relating to the Allentown Terminal Railroad, except that there shall be added to the maximum rental five per centum upon the cost of the Lehigh and Lackawanna and the Wind Gap and Delaware Railroads, it being understood and agreed that the term "The Lehigh and Susquehanna Railroad and Branches" shall from January 1, 1892, for all purposes of this agreement, include all the railroads recited in the agreement of March 31, 1871, and the extensions or branches of the railroads therein recited, and also the Allentown Terminal Railroad, the Lehigh and Lackawanna Railroad, and the Wind Gap and Delaware Railroad, and that all additional railroads or branches that may be required within the territory contiguous to the Lehigh and Susquehanna Railroad and branches shall be built under the provisions of the first and second of the mutual covenants of the agreement of March 31, 1871.

957 Eleventh. That the Port Reading Company shall not and will not divert or permit or cause to be diverted from the transportation lines or terminals comprising the Central system its present traffic or any traffic which would naturally go to or towards its destination by or over the said system or any part thereof; and covenants and agrees that the tonnage mileage of all classes of traffic over the rail and water lines of the Central system shall be fostered and increased (by affording proper facilities and the making of reasonable and proper charges for transportation and otherwise), in such natural and proper future growth as shall be due to the location and resources of the said system. And the Port Reading Company shall at all times and from time to time during the term, give and extend to the individual operators and miners of coal along the lines of the Central Company, all due facilities for the shipping and marketing of the coal mined by the said operators and miners over the Central system and its terminals, and the Port Reading Company shall not do anything in discrimination against the said operators and miners. That the Port Reading Company will furnish sufficient cars and requisite facilities for transportation as needed for the shipment of anthracite coal from the mines that are or may hereafter be naturally tributary to the Central
958 system, to an amount equal in proportion of the total production of anthracite coal in the whole anthracite region to the proportion shipped on the said system in the year ending December 31, 1891, and for the shipment from the mines operated by the Lehigh and Wilkes Barre Coal Company of an amount not less in any one year than the tonnage mined by said Coal Company in the year 1891.

And that the rates of transportation charges upon the coal mined from said lands shall be as low as are at any time charged from any adjacent lands by any route, and relatively as low as are from time to time charged by the Reading Company or Port Reading Company from the Schuylkill region.

And that the suburban passenger and freight service on the lines of the Central Company shall not be diminished without the consent of the Central Company, and that the passenger service on the Lehigh and Susquehanna Railroad and branches shall not be diminished without consent of the Central Company, more than in proportion to any reduction made in the passenger service in the whole region belonging to the Lehigh Valley Railroad and branches and the Lehigh and Susquehanna Railroad and branches, and that a sufficient passenger service shall be maintained on all lines of the Central Company for the conduct of the business and the accommodation of the public.

And in case of difference of opinion as to the character of service of the Lehigh and Susquehanna Railroad and its branches the question shall be referred to arbitration, to which the Lehigh Coal and Navi-
959 gation Company may be a party, in the manner provided for in the agreement of March 31, 1871, and its supplements.

Twelfth. That the Port Reading Company shall, during the term hereby demised, upon the request of the Central Company, furnish the President, Directors, officers and employees, for the time being, of the Central Company, with annual passes or tickets, entitling them to free passage in the passenger trains of the Port Reading Company over the hereby demised railroads, together with passes to such persons as are entitled thereto under the laws of the State of New Jersey and to such other persons as may be legally entitled thereto.

Thirteenth. That the Port Reading Company, its successors and assigns, keeping and performing the covenants herein contained, on its and their part to be kept and performed, shall and may at all times, and from time to time, peaceably and quietly have, hold, use and enjoy the demised premises and every part and parcel thereof, with the appurtenances, without any manner of let, suit, trouble or hindrance from the Central Company, its successors and assigns; and the Central Company shall and will at any time hereafter execute and deliver such further assurances as may be reasonably required for fully effectuating the objects and purposes of this indenture, and the more fully securing unto the Port Reading Company all the rights and privileges hereinbefore mentioned and granted, or intended so to be.

Fourteenth. That the Central Company shall and will, during the 960
term hereby demised, maintain its corporate existence and organization; and at all times, and from time to time during the said term, when requested by the Port Reading Company, its successors or assigns, shall and will put in force and exercise each and every corporate power, and do each and every corporate act which the Central Company might now or may at any time hereafter lawfully put in force or exercise to enable the Port Reading Company to enjoy, avail itself of, and exercise every right, franchise, and privilege in respect of the use, management, maintenance, renewal, extension, alteration, or improvement of the premises hereby demised, or intended so to be, or the business to be there carried on. All the stocks owned by the Central Company of corporations the railroads of which are included in this lease, shall remain the property of the Central Company; but the Central Company shall, upon the request of the Port Reading Company, procure any action to be taken by such corporation which may be necessary to secure to the Port Reading Company, subject to all the provisions of this lease, the same right to construct, maintain and operate the same as is now possessed by the Central Company.

The Central Company may with the consent of the Port Reading Company, but not otherwise, sell and dispose of any of the said stock.

The Port Reading Company agree to indemnify and save harmless 961
the Central Company, and any companies the railroads of which are included in this lease, against all loss, damage or liability for the exercise of corporate powers, or performance of corporate acts, when exercised or done at the request of the Port Reading Company.

Fifteenth. The Central Company hereby covenants that the premises hereby demised are absolutely free and clear from any and every charge, lien, or encumbrance whatever, except the mortgages and charges hereinbefore referred to, and that the Central Company shall and will fully pay and discharge the principal of the bonds secured by the said mortgages, when and as the same shall become due and payable, or procure the same, from time to time, during the time of this lease, to be converted, extended, renewed or replaced by other bonds or securities, bearing interest at the lowest rate attainable.

Sixteenth. That the Central Company shall from time to time and at all times give immediate notice to the Port Reading Company of any claim presented or suit brought against the Central Company by which the Port Reading Company may be involved in any liability

whatever, to permit the Port Reading Company to make, in the name and on behalf of the Central Company, but at the cost and expense of the Port Reading Company, any legal defense that can be made to such claim or suit.

962 The said Port Reading Company shall defend all actions of every kind relating to the demised premises that may be depending against the said Central Company or that may hereafter be brought against said Central Company during the said term, and shall pay all amounts that shall or may be therein recovered against the said Central Company, and shall also indemnify and save harmless the said Central Company of and from all causes of action, legal and equitable, and claims and demands that have arisen, or shall or may arise against it, or which shall or may arise against the said Port Reading Company, in the exercise of its powers under this lease and during the continuance thereof, and all payments so made by the Port Reading Company shall be charged as part of its operating expenses hereunder in the computation of surplus net earnings.

Seventeenth. That the Central Company shall and will cause the American Dock and Improvement Company (a corporation of the State of New Jersey, the whole capital stock of which is owned by the Central Company), upon the request of the Port Reading Company, whenever in the opinion of its officers it shall be desirable to enlarge the area of the existing terminal property on the Hudson River and the waters of New York Bay, to lease, at a nominal rent in addition to taxes, such part or parts of the said Dock and Improvement Company's property not now leased to other parties or hereafter sold or leased with the consent of the Port Reading Company, as shall be desig-
963 nated by the Port Reading Company, but only for the purposes of traffic passing to and from the same over railroads of the Central system under the tripartite contract of even date herewith or other existing traffic agreements, and for the term of this lease, and thereupon to put the Port Reading Company immediately in possession of the same as part of the demised premises; and in order to secure the performance of this covenant, the said Central Company hereby covenants and agrees that it will not at any time sell any of the capital stock of the said American Dock and Improvement Company, or otherwise relinquish or endanger its control of that Company; and that it shall also by means of such control, prevent the said American Dock and Improvement Company from making any sale of any part of its said property that may be reasonably required for railroad purposes.

Eighteenth. That the Central Company will make no further issues of stock, except under the obligations of the convertible Debenture Bonds, nor incur any further indebtedness whatsoever, which issues of stock or indebtedness shall subject the Port Reading Company to any additional burden, excepting under the provisions of this instrument, without the written consent of the Port Reading Company.

Provided, however, that nothing herein contained shall prevent the Central Company from increasing its capital stock or indebtedness without the written consent of the Port Reading Company, in such manner as not to subject the Port Reading Company thereby to the
964 payment of any additional rent.

Nineteenth. The Central Company hereby sells, assigns and transfers unto the Port Reading Company, its successors and assigns, all railroad materials, such as rails, ties, oil and other articles generally

known as railroad supplies, which on the day of the date of these presents are or shall be stored but not in use for railroad purposes; and the Port Reading Company agrees to pay for these materials the actual value thereof as they existed on January 1, 1892, when an inventory thereof was taken.

Payment for such supplies shall be made at such times as may be agreed upon, but not later than January 1, 1893. Interest on the value of such supplies shall be computed at five per cent. from January 1, 1892, until payment is made.

Twentieth. That this lease shall not be sold, mortgaged or assigned, and no portion of the demised premises shall be sublet without the consent of the Central Company given in writing under its corporate seal. And no purchaser at any judicial sale, nor assignee, receiver nor mortgagee of the Port Reading Company, nor any assignee thereof appointed under proceedings in bankruptcy, or becoming so by virtue of any act or operation of law in any proceeding against it at law or in equity, shall have any title to or interest in the said premises hereby demised, or any part thereof, without the consent of the Central Company given as aforesaid in writing under its corporate seal.

Twenty-first. For all purposes of this agreement the term "traffic" 965
shall be held to include passenger, freight, coal, mail and express, and all other kinds of rail and water traffic. The terms "Central system" and "lines of the Central Company" shall be held to include all the railroads which form part of the demised premises, including any extensions thereof made under the betterment clause of this lease.

All consents and requests herein provided shall be in writing, and shall be signed by the president, vice-president or secretary of the consenting or requesting party.

Twenty-second. This lease shall take effect as of January 1, 1892. All interest, rentals, taxes, insurance and other accounts shall be adjusted between the parties as of that date and the balance found to be due from either party to the other shall be paid within ten days after ascertainment. All liabilities or charges, and all revenues after January 1, 1892, except expenditures on capital account, shall be charged and credited respectively to the Port Reading Company; provided, however, that any interest, charge, tax, revenue or assessment, payable for any period beginning before January 1, 1892, shall be apportioned between the parties hereto so that the Port Reading Company shall be liable for or entitled to only that portion which shall have accrued after January 1, 1892. All liabilities heretofore incurred by, or in behalf the Central Company, in relation to the demised premises, for or account of which under existing contracts or 966
agreement, payments have been made since January 1, 1892, or are now or may hereafter become due, which are or shall properly be chargeable to capital account, may be liquidated by the Central Company as hereinafter provided respecting betterments made at the request of the Port Reading Company, and with like effect.

Twenty-third. That if the Port Reading Company shall make default in the payment of the rent hereby reserved, or in any of the payments herein covenanted to be made by it for a period of thirty days after the same shall have become due, or shall fail to keep and faithfully perform any of the covenants of this agreement on its part to be kept and performed, then it shall be lawful for the Central Company at its option to declare this lease at an end and the agreements

herein contained to be rescinded, and it may thereupon re-enter and repossess the whole of the demised premises, including all property, real and personal, embraced within the terms of this lease, as of its first and former estate and may resume, take and enjoy all its rights, privileges and franchises as if this agreement had not been made, and notice of the exercise of such option and of the intention to re-enter upon and repossess itself of said demised premises shall operate as a reassignment of the agreements and leases hereby assigned, but the exercise of such option and such re-entry, repossession and reassignment shall not relieve the Port Reading Company from liability to the Central Company, its successors and assigns, for all arrears of rent due and unpaid at the time, and for all damages resulting from
967 the breaches of covenant by the Port Reading Company; and the Port Reading Company hereby covenants and agrees that it will forthwith, after notice of the exercise of such option on the part of the Central Company, deliver over to said Central Company all the property and rights of every kind description as nature then held by said Port Reading Company under this lease, and will on request immediately execute and deliver to said Central Company all agreements, deeds and transfers that may be necessary or proper to reinvest said Central Company with all said demised premises, and all said assignments, leases and contracts as fully as if they were held by the Central Company at the time this lease was made, saving and excepting the personal property purchased and paid for by the Port Reading Company under this agreement, which shall in such case remain the property of the Port Reading Company.

Twenty-fourth. It is understood and agreed, and is of the essence of this contract, that if default shall be made by the Port Reading Company on any of its covenants in and under a certain tripartite agreement of even date herewith, between the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company and the Port Reading Railroad Company, and if such agreement shall be terminated by reason of any such default or for any other reason, then this lease shall, at the option of the Central Company, be thereby at once terminated and ended, and such termination shall operate as a reassignment of all agreements and
968 leases assigned hereby.

Twenty-fifth. It is further covenanted and agreed that in the event of the Central Company resuming possession of the said demised premises as hereinbefore provided, the Port Reading Company shall make good to the Central Company any depreciation in the then aggregate value of the demised premises from their present value.

In Witness Whereof, the parties hereto have caused their corporate seals, duly attested, to be hereunto affixed the day and year first above written.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
——— ———, *President.*

Attest:
——— ———, *Secretary.*

THE PORT READING RAILROAD COMPANY,
——— ———, *President.*

Attest:
——— ———, *Secretary.*

(Marked "Exhibit 77, C. H. G.")

Agreement between the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company, and the Port Reading Railroad Company, dated February 12th, 1892.

969 Articles of a Contract and Agreement, made this 12th day of February, A. D. 1892, by and between The Central Railroad Company of New Jersey, hereinafter called the Central Company, party of the first part; The Philadelphia and Reading Railroad Company, hereinafter called the Reading Company, party of the second part and The Port Reading Railroad Company hereinafter called the Port Reading Company, party of the third part:

Whereas, The lines of the railroads owned, leased and operated by the parties hereto are connected at several points in the States of Pennsylvania and New Jersey, and form continuous lines of railroad between numerous places of commercial importance capable of producing large contributions of freight and passenger traffic to the lines of said Companies, if worked as continuous lines; and

Whereas, The Central Company and the Port Reading Company have negotiated for a lease of all the lines of railroad of the Central Company, whether owned by it or acquired by virtue of any leases, 970 to the Port Reading Company, for the term and period of nine hundred and ninety-nine (999) years, upon the payment of the annual rentals and the performance of the certain covenants, agreements and stipulations contained in the said proposed lease, a copy whereof is hereto attached and made part hereof, which said lease the said Central Company is willing to execute and deliver, if the Reading Company shall guarantee the prompt and punctual payment to the Central Company by the Port Reading Company of the rentals reserved in the said lease as and when the same shall become due and payable, and shall also guarantee the full and faithful performance by the Port Reading Company of all the covenants, stipulations and agreements contained in the said lease by it, the said Port Reading Company, to be kept and performed on its part; and the Port Reading Company is willing to execute and deliver the said lease upon the execution of this contract by the Reading Company whereby there will be assured to the said lines of the Central Company, in addition to the traffic now tributary thereto, such an increase of the traffic thereon as will secure to the Port Reading Company sufficient revenue to meet and pay the said rentals and perform the covenants and stipulations contained in the said lease; and

Whereas, In consideration of the benefits and advantages to be derived hereunder from the use of the terminal properties and facilities of the Central Company so to be leased to the Port Reading Company, and from the interchange of traffic herein provided for, the Reading 971 Company is willing to guarantee to the Central Company the payment by the Port Reading Company of the rentals reserved in the said proposed lease, and the performance by the said Port Reading Company of all the covenants, stipulations and agreements of the said lease by it to be kept and performed, and also of all the covenants, stipulations and agreements herein contained and written to be kept and performed by the said Port Reading Company;

Now, therefore, In consideration of the premises, of the mutual covenants and agreements herein contained between each of the

parties and each of the other parties, as well as for and in consideration of the sum of one dollar by each of the parties in hand paid to each of the other parties hereto, the receipt whereof is hereby acknowledged, the said parties hereto have agreed, and by these presents do covenant and agree to and with each other as follows, that is to say:

First. That the Central Company and the Port Reading Company shall immediately execute and deliver the lease of the railroads and other property of the Central Company, a copy whereof is hereto attached and made a part hereof, with the sanction and approval of the respective Board of Directors of the said companies, and that they shall and will severally thereafter take such proceedings from time to time on the request of the Reading Company as shall, in the
972 opinion of its counsel, be requisite to procure the assent thereto of the necessary number of the stockholders of the said companies, and that the possession and control of the railroads and other property of the Central Company so leased shall forthwith be taken by the Port Reading Company.

Second. That the Reading Company shall and will guarantee and hereby does guarantee unto the Central Company, that the said Port Reading Company shall and will promptly and punctually pay over to the Central Company in each and every year during the continuance of the said lease, on the days and times fixed and appointed in the said lease for the payment thereof, the several sums of money reserved therein by the Central Company as rental for the said railroads and premises. And further, that the said Reading Company shall and will guarantee, and does hereby guarantee, unto the said Central Company that the said Port Reading Company shall and will at all times during the continuance of the said contract of lease, fully and faithfully keep and perform each and every of the covenants, agreements and stipulations contained in the said lease to be kept and performed by it, the said Port Reading Company; and further, that the said Reading Company shall and will guarantee, and does hereby guarantee to the Central Company, that the Port Reading Company shall and will at all times during the continuance of the said contract of lease, and during the continuance of this contract, fully and faithfully keep and perform on its part, each and every of the covenants, agreements and stipulations herein contained to be
973 kept and performed by it, the said Port Reading Company. And that, in case of any default of the said Port Reading Company to pay any of the said rentals on the days and times fixed and appointed in the said lease for the payment of the same, or to make payment of any other moneys provided in the said lease to be made by the Port Reading Company, then and in that event the Reading Company shall pay over the same and each and every sum or amount thereof to the Central Company or to the person or persons entitled to receive the same, on the demand of the Central Company. And in the case of any default of the Port Reading Company to keep and perform any of the covenants, agreements and stipulations contained in the said lease or in this agreement to be performed by it, then and in that event the Reading Company shall cause the said Port Reading Company to keep and perform its covenants, agreements and stipulations in that behalf within thirty days after demand therefore by the Central Company, otherwise the Reading Company shall pay to the

Central Company all damages which shall be suffered by the Central Company growing out of or arising from such breach of its covenants, agreements and stipulations in that behalf by the Port Reading Company.

And further, that in case of the termination of the said contract of lease, by virtue of the provisions thereof, for or on account of the default of the Port Reading Company, or for or on account of the default 974
of the Reading Company to perform its guarantees hereunder, or any of them, or for any other cause, then and in that event the Reading Company shall nevertheless well and truly pay over to the Central Company any and all of the said moneys which shall be due and unpaid by the Port Reading Company at that time, and shall and will well and truly pay any and all damages resulting to the Central Company from the breach or breaches of any of its covenants, stipulations or agreements by the Port Reading Company, whether the same shall be contained in the said lease or herein.

Third. The Port Reading Company shall, during the continuance of the said contract of lease, provide or procure at Jersey City or Port Reading and in New York and Brooklyn the necessary terminal and dock and transfer facilities for all freight and passenger traffic delivered to it by the Reading Company or originating on its lines and those of the Central Company, destined to said points or via such points for points beyond and for all traffic destined from said points to points on or reached by way of the lines of the Reading Company or Central Company.

It being understood that the Central Company shall have the prior right, at its option, to provide the said facilities or any part thereof, except at Port Reading, for the use of the Port Reading Company, under the betterment clause of the lease, and to enable the Central Company to exercise such prior right it shall in all cases receive notice from the Port Reading Company that the said Com- 975
pany desires to procure the same, and in case the Central Company exercises such prior right and provides the same, all amounts expended therefor shall be treated as expenditures for betterments under the betterment clause of the said lease, and any leases or agreements providing the same or any part thereof shall be taken by and in the name of the Central Company, but the rent and other charges therefor shall be fixed charges of the Central Company and shall be paid by the Port Reading Company as such. Such terminal, dock and transfer facilities so provided shall form part of the demised premises, subject as such to all the covenants of said lease.

Should the Central Company, after being requested by the Port Reading Company to provide such terminal, dock and transfer facilities, refuse or neglect for a period of thirty days to take the necessary action thereon, the same may be otherwise procured or provided for by the Port Reading Company.

Fourth. All traffic between points on the Reading system and its connections and points on the Central system and its connections shall be carried on the joint lines of said systems by the most direct route now constructed between the point at which the same shall be received and the point where the same is to be delivered, and shall not be diverted therefrom, except that all anthracite coal not originating on the lines of the Central system may be carried by such 976

route and to such termini as shall be designated by the Reading Company; provided, however—

1. That all anthracite coal from mines now tributary to or hereafter naturally tributary to the Central system shall be forwarded to or toward destination for so long a distance as possible via the lines of that system.

2. All anthracite coal from mines now tributary to or hereafter naturally tributary to the Reading system, and destined by rail to tide-water points in Hudson County, New Jersey, or on the harbor of New York north and east of Elizabeth, or to other points now reached or naturally to be reached by the lines of the Central Company, shall be forwarded over such lines at least from Bound Brook Junction.

3. All anthracite coal for delivery at points on the Central system except to tide-water for reshipment, shall be coal produced at mines tributary to the Central system and shall be transported over such system to destination, whenever such mines tributary to the Central system are able to supply the same.

Provided, however, that if any anthracite coal other than that produced at mines tributary to the Central system shall be delivered at any points on said system except at tide-water for reshipment, the lines of the Central Company shall be credited with the same amount of earnings as if such coal had been shipped from the mines
977 in the Wyoming region.

4. No traffic to or from the Easton and Amboy Railroad or other lines of the Lehigh Valley system, to or from the terminal lands of the Central Company (including the land of the American Dock and Improvement Company), shall pass a shorter distance over the Central lines than between Roselle Junction and such terminal lands, and the Central lines shall be entitled to receive for such traffic the rates fixed by the agreement of April 27, 1887, between the Central Railroad Company of New Jersey and the Lehigh Valley Railroad Company so far as it is applicable.

All business now interchanged between the systems of said companies at points other than Roselle Junction shall continue to be interchanged according to the present traffic arrangements unless otherwise consented to by the parties hereto.

5. Nothing in this agreement contained shall be understood to require the Reading Company to divert or permit or to cause to be diverted from the transportation lines or terminals comprising the system of the Lehigh Valley Railroad Company its present traffic or any traffic which would naturally go over railroads of that system now constructed and operated, to or toward destination by or over the said system or any part thereof.

978 Fifth. All divisions of earnings from traffic interchanged between the lines of the parties hereto shall be made upon the basis which now prevails in respect of the traffic now interchanged between the lines of the Central Company and the Reading Company, including the allowance of arbitraries and the customary terminal charges, and such basis shall not be changed without the agreement of the parties hereto in writing. And if any case shall arise in which the basis of divisions now in force shall not be strictly applicable, the rules and principles upon which such divisions are now made shall be applied

as nearly as may be until the parties hereto shall have agreed upon another basis for such exceptional case or cases.

Sixth. The operations of the lines of the Central Company shall be so conducted and carried on by the Port Reading Company as to maintain and increase the business and earnings thereof so far as possible, and at least to transport over said lines at all times during the continuance of said lease all the traffic now tributary to or passing over the said lines and to augment the same from time to time in proportion to the increase of traffic in the vicinity, and the Reading Company in conducting the traffic of its lines to be interchanged with the said lines to be operated by the Port Reading Company, shall so route, deliver and receive the same that the traffic now tributary to or passing over the lines leased by the Central Company, shall not be diminished, but that the same and the revenues there- 979
from shall be augmented from time to time at least in proportion to the general increase of traffic in the territory occupied by the said lines and their connections, and the vicinity thereof.

It is further and in particular stipulated, covenanted and agreed, in pursuance of the agreements heretofore made to develop the business of the Lehigh and Susquehanna Railroad and branches, that it, the Port Reading Company, will procure all business to be exchanged between points on the Reading system of railroads and its connections and the Central system and its connections, to be routed by the most direct lines formed, or that can be formed, out of existing members of these systems as now constructed; and that at least two-thirds of the all-rail business to be exchanged between points on the Reading and Central systems, or reached via those systems and points on the Poughkeepsie Bridge system, or reached via that system, shall be routed over the Lehigh and Hudson system. Business between points on or reached via the Lackawanna system, the Erie system, or the Ontario system, and points on or reached via the Reading and Central systems, shall, so far as reasonably practicable, be routed via Scranton and the Lehigh and Susquehanna Railroad, and in the event of any deficiency in exchange at Scranton an amount of business that shall make the traffic of the Central system equal to that now done and the probable increase under existing arrangements shall be fur- 980
nished to the Central system at Wilkesbarre or other points on the Lehigh and Susquehanna system; and that bituminous coal, lumber and other like freight, exclusive of anthracite, destined for New York, New England and other points reached by the Central system or Lehigh and Hudson system, which can be now delivered to the Central system by the Nesquehoning Valley Railroad, shall be so routed; and similarly as to use and development, business between points on the Allentown route or reached via that route and points north and east of Allentown shall be routed via the Central system from Allentown, and the division of the charges on the Lehigh and Hudson system and the Poughkeepsie Bridge system shall remain on the present basis;

Provided, however, that all stipulations as to routing shall only be obligatory on the Reading so far and so long as shall be necessary to make and keep the earnings of the Lehigh and Susquehanna Railroad and branches up to the maximum amount stipulated for in the article of the said lease to the Port Reading Company and the earnings of the Central system up to the amount necessary to pay the

maximum rental stipulated to be paid to the Central Company. It is further agreed that copies of all contracts in connection with the
981 construction, maintenance, operation, traffic and other receipts of the demised premises shall be furnished for the information of the Central Company when the same are entered into.

Seventh. The Reading Company shall as soon as the same can be prepared, place in the hands of a suitable Trustee to be mutually agreed upon, securities of the value of two million dollars ($2,000,000), satisfactory to the Central Company, to be held under a Trust Agreement to be prepared to the satisfaction of the Central Company, which the Reading Company shall promptly execute and deliver to secure its guarantee of the prompt and punctual payment of all the said rentals reserved in the said lease made by the Central Company to the Port Reading Company, and the faithful performance of all covenants and agreements of the said lease and hereof, and of any agreements collateral thereto, to be performed by the Port Reading Company or the Reading Company, which said securities, so to be deposited, shall be released and surrendered to the Reading Company when the rentals paid under the said lease by the Port Reading Company in addition to all other payments provided by said lease shall have been equal to ten per centum upon the capital stock of the Central Company for two successive years; and pending the preparation of the said securities, the Reading Company shall otherwise fully satisfy the Central Company in that behalf.

982 Eighth. Each of the parties hereto shall make and enter into in writing, with the other parties and each of them when reasonably requested thereunto, such other and further covenants, agreements and stipulations in the premises as may be necessary to effectuate the true intent, purpose and meaning of the said lease and of this agreement and of the parties hereto, in respect of each and every of the provisions thereof.

Ninth. Should any disagreement arise between the parties hereto as to any matter or thing arising under or in consequence of this agreement and the operations carried on hereunder, or if the parties hereto shall fail to agree as to what ought to be done or omitted, in respect of any matter or thing not specifically covered by the express provisions of this contract, but coming within the general scope and true intent and purpose thereof, every such disagreement shall be determined by arbitration, one arbitrator to be appointed by the Central Company and the other to be appointed by the Reading Company, and the finding of such arbitrators shall be final and conclusive upon the parties hereto as to such controversy. In any case where the arbitrators are to be appointed hereunder and either the Central Company or the Reading Company shall neglect or refuse to make an appointment for a period of ten days after being requested in writing by the other party to make such appointment, which request shall set forth specifically the matter or thing to be submitted, then the
983 arbitrator appointed by the party not in default in making such appointment shall appoint an arbitrator for the party so in default and the two arbitrators so appointed have the same power as though each of them had been appointed by each of the said parties. And in any case where the arbitrators so chosen shall disagree they shall have the right to appoint an umpire and the decision of a majority of the three shall have the same force and effect as though the two arbi-

trators first appointed should have agreed upon such decision as their finding. In case the two arbitrators first chosen by either method cannot agree, and do not agree, within five days after such disagreement and do not select an umpire as above provided, then upon application by either the Central Company or the Reading Company such umpire may be appointed first by the Commissioner for the time being of the Trunk Line Association, or if there be no such Commissioner, or if he for any reason does not act within five days after being requested so to do, by the Chairman of the Executive Committee thereof, and in case of there being no such Commissioner or Chairman or of their refusal or failure to act, then such an appointment may be made on the application of either the Central Company or the Reading Company, by the Chief Justice of the Supreme Court of the State of New Jersey, and failing action by the Chief Justice, for any reason, then by any Justice of the said Court or such Court 984
as may be created in lieu thereof, And in respect of any and every such controversy wherein the Port Reading Company may or shall be affected, it shall also be bound by any award of the arbitrators chosen by either mode above provided for, with like effect as though it had joined in the appointment of such arbitrators.

Tenth. Nothing contained in this agreement shall be so construed as to affect in any wise the obligations of the parties hereto, or any of them, in respect of the tripartite contract made March 30, 1876, between the North Pennsylvania Railroad Company, the Delaware and Bound Brook Railroad Company and the Central Railroad Company of New Jersey, the obligations of which have been heretofore assumed by the Reading Company, nor of the contract dated July 27, 1886, between the Baltimore and Ohio Railroad Company, the Baltimore and Philadelphia Railroad Company, the Philadelphia and Reading Railroad Company, the Schuylkill River East Side Railroad Company and the Central Railroad Company of New Jersey, nor of any modification or supplement executed by the parties thereto, nor of the agreement between the Central Railroad Company of New Jersey and the Lehigh Valley Railroad Company dated April 27, 1887, but in respect of the traffic covered by the said contracts severally, the provisions of the said contracts shall be applied with like effect as though the terms thereof were written herein, and at and upon the 985
termination of the said lease to the Port Reading Company, the provisions of the said above-recited contracts shall continue in force and be binding upon the parties hereto and their successors with like effect as though this contract had not been entered into.

Eleventh. In case of the termination of the lease of the lines of the Central Company to the Port Reading Company at any time, from any cause whatsoever, the Central Company shall have the right to acquire, at its option, an equal interest with the Reading Company in the lines of the Central New England and Western Railroad Company, and in the Poughkeepsie Bridge Company, upon paying therefor the one-half of the net cost of the same to the Reading Company, and assuming the like proportion of all obligations incurred or assumed by the Reading Company, and the Central Company shall have the like option in respect of all railroads or works connecting with the lines of the Central Company, which shall have been acquired or promoted or constructed by the Reading Company and the Port Reading Company, or either of them, during the term of said lease. Such sup-

plemental agreements shall be executed from time to time, as in the opinion of counsel shall be necessary to effectuate this covenant and enable the Central Company at all times to enforce the same.

986 Twelfth. This contract and agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto respectively, and shall continue in force for and during the term of the continuance of the said lease from the Central Company to the Port Reading Company, and thereafter until each and all of the obligations of the Reading and Port Reading Companies thereunder and hereunder shall have been fully and completely performed and discharged.

Thirteenth. The terminal shipping and other facilities of and on lands of the Central Company, including lands of the American Dock and Improvement Company for anthracite or bituminous coal, shall be used only for coal transported over the Central system from Mauch Chunk or points beyond, excepting only anthracite coal from the mines in the Schuylkill region, which may be routed via Bound Brook. The Lehigh Coal and Navigation Company and the Lehigh and Wilkesbarre Coal Company shall be permitted to retain the coal docks now used by them on terms that shall be as favorable as those which may be given to any other parties, and shall not be less favorable than the terms now in force.

Fourteenth. That if it should become necessary, for the purposes of the said lease and of this agreement, and of the lease of the Lehigh and Susquehanna Railroad and branches that the Central Company
987 should request The Lehigh Coal and Navigation Company to operate the Lehigh and Susquehanna Railroad and branches, the Central Company may at its option make such request, and require the Lehigh Coal and Navigation Company so to do, under the terms and conditions of the agreement between the Central Company and The Lehigh Coal and Navigation Company of the 28th of June, 1887.

Fifteenth. For all purposes of this agreement, the terms herein used shall be defined as follows: The term "traffic" shall be held to include passenger, freight, coal, mail and express, and all other kinds of rail and water traffic.

The terms "Central system," "Central lines," "lines of the Central Company," shall be held to include all the railroads which form part of the premises demised by the said lease of even date herewith, including any extensions thereof made under the betterment clause of said lease.

The terms "Lehigh and Susquehanna system," "Lehigh and Susquehanna Railroad and its branches," shall be held to include all the railroads recited in the agreement of March 31, 1871, between the Lehigh Coal and Navigation Company and the Central Railroad Company of New Jersey, and the extensions or branches of the railroads therein recited, and also the Allentown Terminal Railroad, the Lehigh and Lackawanna Railroad, the Wind Gap and Delaware Railroad, and the Wilkesbarre and Scranton Railroad.

The terms "Lehigh Valley system," or "system of the Lehigh 988
Valley Railroad Company," shall be held to include all the railroads and terminals which form part of the premises demised by the Lehigh Valley Railroad Company to the Philadelphia and Reading Railroad Company by lease of February 11, 1892.

The term "Reading system" shall be held to include all the railroads operated by the Philadelphia and Reading Railroad Company, except those embraced in the "Central system" and Lehigh Valley system as hereinabove defined.

The term "Poughkeepsie Bridge system" shall be held to include the Poughkeepsie Bridge and all points between the northerly terminus of the Orange County Railroad and that bridge.

The term "Lehigh and Hudson system" shall be held to include the Lehigh and Hudson Railroad and the Orange County Railroad.

The term "Lackawanna system" shall be held to include the railroads of the Delaware, Lackawanna and Western Railroad Company and all railroads operated by it.

The term "Erie system" shall be held to include the railroads of the New York, Lake Erie and Western Railroad Company and all railroads operated by it.

The "Ontario system" shall be held to include the railroads of the 989
New York, Ontario and Western Railroad Company and all railroads operated by it.

All consents, requests and notices herein provided shall be in writing and shall be signed by the President or Vice President and Secretary of the consenting, requesting or notifying party.

Sixteenth. That in case of the breach of any of the covenants herein contained on the part of the Port Reading Company or of the Philadelphia and Reading Railroad Company, and thirty days' notice thereof given by the Central Company or its assigns to the Port Reading Company, if the same cannot or shall not be fully compensated within said time, then and in such case the Central Company or its assigns may at its or their option declare this agreement and the lease of the Central Company to the Port Reading Company, herein referred to, to be terminated, and the agreements contained therein to be rescinded, and the Central Company may thereupon enter on the property and premises therein and thereby demised as and for condition broken, and repossess itself of the whole of the demised premises, including all property, real and personal, embraced within the terms of said lease, as of its first and former estate, and may resume, take, use, and enjoy all rights, privileges, and franchises thereby demised or granted as if said lease had never been made, and all the rights and powers reserved to the Central Company in and by 990
the twenty-third article of the said indenture or lease shall accrue to and be exercised by the said Central Company in case of the breach of any of the covenants contained in this agreement, as is reserved and stipulated in and by the said article of said lease.

In witness whereof, The said parties hereto have respectively caused their corporate seals to be hereunto attached, and this instrument to be signed by their respective Presidents and attested by their respective Secretaries, under the authority of their several Boards of Directors, the day and year first above written.

Witness:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
——— ———, *President.*

Attest:

——— ———, *Secretary.*

THE PHILADELPHIA AND READING RAILROAD COMPANY,
——— ———, *President.*

Attest:

——— ———, *Secretary.*

991 THE PORT READING RAILROAD COMPANY,
——— ———, *President.*

Attest:

——— ———, *Secretary.*

(Marked "**Government Exhibit No. 78, C. H. G.**")

992 *Memorandum of agreement, made and entered into this twelfth day of February, 1892, by and between the Lehigh Coal and Navigation Company, hereinafter called the Lehigh Company, party of the first part, and the Central Railroad Company of New Jersey, hereinafter called the Central Company, party of the second part.*

Whereas, The Central Company is about to execute and deliver a lease of even date herewith to the Port Reading Railroad Company, of its railroads and appurtenances, including the Lehigh and Susquehanna Railroad and Branches, to be held and operated by the Port Reading Railroad Company subject to the terms and conditions of the agreements of March 31st, 1871, May 29th, 1883 and June 28th, 1887:

Now this agreement witnesseth:

First. That the Central Company has covenanted, promised and agreed, and does hereby covenant, promise and agree to and with the Lehigh Company, that the execution of the said lease to the Port Reading Railroad Company by it shall in no manner prejudice, affect or impair the obligation of the Central Company to keep and perform all the covenants and agreements contained in the said agreements of March 31, 1871, May 29th, 1883 and June 28th, 1887, and that in the event of the termination, from any cause, of the said
993 lease to the Port Reading Railroad Company and re-entry upon the demised premises by the Central Company, the rights and duties of the Lehigh and Central Companies, as between each other, shall remain the same as if the said lease to the Port Reading Railroad Company had never been executed; and the right of the Lehigh Company to object to any future transfer or assignment by the Central Company of its rights relative to the Lehigh and Susquehanna Railroad and branches under the agreements aforesaid shall in no wise be affected or impaired by reason of the failure of the Lehigh Company now to object to the lease hereinbefore referred to from the Central Company to the Port Reading Railroad Company.

Second. All the stipulations and provisions contained in the lease by the Central Company to the Port Reading Railroad Company, and in a certain tripartite agreement of the same date between the Central Company, the Port Reading Railroad Company and the Philadelphia and Reading Railroad Company, so far as the same relate to, or affect the business and operations, or the revenues therefrom, of the Lehigh and Susquehanna Railroad and branches, shall be taken to enure to the benefit of the Lehigh Company, and shall not be modified or rescinded without its consent, and may be enforced by the Lehigh Company against the Port Reading Railroad Company and the Philadelphia and Reading Railroad Company, for 994
its own use and benefit, in the name of the Central Company, but at the cost and expense of the Lehigh Company

Third. In case of the termination of the lease of the lines of the Central Company to the Port Reading Railroad Company, at any time, the Lehigh Company shall have the right to purchase from the Central Company one-half of the interest in the lines of the Central New England and Western Railroad Company, and in the Poughkeepsie Bridge Company, which by the tenth section of the said tripartite agreement the Central Company has the right to purchase from the Philadelphia and Reading Railroad Company, upon the Lehigh Company paying one-half of the cost to the Central Company of its said interest, such cost to include legal interest on such cost less any revenues received, and assuming one-half of the obligations which it shall assume under the provisions of the said tenth section.

Fourth. The Lehigh Company covenants and agrees that in case for any reason the Central Company should desire the Lehigh and Susquehanna Railroad and Branches to be operated by the Lehigh Company, it will, upon the request of the Central Company, so operate the said railroad and branches, as stipulated in the agreement of June 28, 1887.

In witness whereof, the parties hereto have caused their corporate 995
seals to be hereunto affixed, duly attested, the day and year first above written.

By order of the Board of Managers of

[SEAL.] THE LEHIGH COAL AND NAVIGATION COMPANY,
By (Sgd.) J. S. HARRIS, *President.*

Attest:
(Sgd.) S. SHEPHERD, *Secretary.*

[SEAL.] THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
By (Sgd.) J. R. MAXWELL, *President.*

Attest:
(Sgd.) SAM'L KNOX, *Secretary.*

A true copy—
M. O'CONNOR.
L. A. C. McSHEA.

(Marked "**Government Exhibit No. 79, C. H. G.**")

AGREEMENT OF CO-OPERATION.

The Lehigh Coal and Navigation Company, The Central Railroad Company of New Jersey, and the Lehigh & Wilkes Barre Coal Company, February 1st, 1892.

996 Whereas, An agreement was made and entered into by and between The Lehigh Coal and Navigation Company and the Wilkes Barre Coal and Iron Company under date of March 15, 1870, one of the provisions of which agreement was, that all the coal of the Wilkes Barre Coal and Iron Company "destined for the markets of Philadelphia or New York, or other eastern ports, or ports or points intermediate between Wilkes Barre and New York and Philadelphia accessible by said railroads or canals or other lines of transportation connected therewith" shall be shipped to market over the railroads and canals of the Lehigh Coal and Navigation Company; and

Whereas, This agreement is still in force by the terms thereof, but many of the provisions are no longer applicable to the existing status of the business relations of the parties thereto, and are no longer practically enforced, although the reasons for an union of the interests of the parties thereto still continue; and

Whereas, All the rights and property then held by the Wilkes Barre Coal and Iron Company have since become vested in the Lehigh and Wilkes Barre Coal Company, which, in addition to the lands which were in 1870 owned by the Wilkes Barre Coal and Iron Company in the Wyoming Region, has purchased other lands both in the Wyoming and the Honeybrook Regions, the tonnage of some of which
997 lands is bound by covenants in the deeds to pass over the railroad and canal lines of The Lehigh Coal and Navigation Company; and has or expects to acquire also a joint interest with The Lehigh Coal and Navigation Company in the "Alliance" coal lands in the Schuylkill Region; and

Whereas, The railroads of The Central Railroad Company of New Jersey and the railroads and canals of The Lehigh Coal and Navigation Company together constitute continuous transportation lines from the coal lands of the Lehigh and Wilkes Barre Coal Company to tide-water at New York, to which point most of the coal of the Lehigh and Wilkes Barre Coal Company is shipped, and the said railroads under the agreements of March 31, 1871, May 29, 1883 and June 28, 1887 are operated as one railroad under a single management, and The Central Railroad Company of New Jersey and The Lehigh Coal and Navigation Company are both interested in securing tonnage for the said transportation lines; and

Whereas, Both the said transportation companies are willing to contract to furnish at all times cars and boats for the transportation of the coal of the Lehigh and Wilkes Barre Coal Company on as favorable rates as shall be given by them, or either of them, to any other anthracite producer, or as shall be given by their competitors in transportation to other anthracite producers similarly situated; and

998 Whereas, The Lehigh and Wilkes Barre Coal Company considers it for its interest to secure in perpetuity the most favorable treatment as to supply of cars and rates of transportation, and desires to strengthen the relations that have so long subsisted between it and The Lehigh Coal and Navigation Company and the Central Railroad Company of New Jersey:

Now therefore it is agreed by the Lehigh Coal and Navigation Company, hereinafter called the Lehigh Company, the Lehigh and Wilkes Barre Coal Company, hereinafter called the Wilkes Barre Company, and the Central Railroad Company of New Jersey, hereinafter called the Central Company, in order to preserve, maintain and promote the mutual intersts which the said agreement of March 15, 1870, and the agreements of March 31, 1871, May 29, 1883 and June 28, 1887, were intended to preserve, maintain and promote, that the said agreement of March 15, 1870 be revised and amended, and is hereby revised and amended so that the Wilkes Barre Company shall become, and it does hereby become so far as the covenants of the said agreements are applicable a party to all of the covenants relating to the mining and transportation of the coal mined or to be mined and transported from the lands of the Wilkes Barre Company, which are now contained in the said agreements of March 31, 1871, May 29, 1883 and June 28, 1887, as fully as if it had been an original party to the said agreements, and for the same term as the terms of the said agreements, or until the lands of the Wilkes 999
Barre Company shall become wholly exhausted; and that those covenants shall be held to relate to all the lands now held or to be acquired by the Wilkes Barre Company whether in fee or by lease, and whether in the Wyoming, Honeybrook or any other anthracite region, the Wilkes Barre Company hereby undertaking to do all that the Central Company undertook in the said agreements of March 31, 1871, May 29, 1883 and June 28, 1887 that it should do; and all the covenants of the agreement of August 10, 1881, and any agreement supplemental thereto between the Central Company and the Alliance Coal Mining Company, and all the covenants of the said agreements of March 31, 1871, May 29, 1883 and June 28, 1887 relating to the shipment over the lines of the Central Company of the coal product of the lands owned, leased or controlled by the Lehigh Company shall be held to apply to the coal product of the lands of the Alliance Company, in which lands the Lehigh Company and the Wilkes Barre Company are jointly interested.

The Lehigh Company and the Central Company agree each for itself in so far as it may have the power to act in the premises, that the Wilkes Barre Company shall always be supplied with at least as large a proportion of empty coal cars and canal boats in proportion to its capacity of production and its requirements for transportation as shall be allotted to any other producer of anthracite that may be tributary to the transportation lines of the Lehigh Company or the 1000
Central Company, and the rates of freight charges for rail and canal transportation to the Wilkes Barre Company shall always be as low to all points as the rates named by the Lehigh Company and the Central Company separately or jointly to any other producer of anthracite for similar consignments and like distances, or as shall be given by competing transportation companies for similar consignments and like distances.

The true intent and meaning of this agreement being to continue the policy heretofore pursued by the parties hereto as evidenced by existing agreements, and to cement their interests indissolubly so that they may mutually protect and defend each other, and may successfully resist any effort to sever them.

In witness whereof, The parties hereto have caused their corporate seals to be hereunto affixed, duly attested this first day of February, A. D. 1892.

By order of the Board of Managers of
[SEAL.] THE LEHIGH COAL AND NAVIGATION COMPANY,
By (Sig.) J. H. HARRIS, *President.*

Attest:
(Sig.) S. SHEPHERD, *Secretary.*

[SEAL.] THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
By (Sig.) J. R. MAXWELL, *President.*

1001 Attest:
(Sig.) SAM'L KNOX, *Secretary.*

[SEAL.] THE LEHIGH & WILKES BARRE COAL COMPANY,
By (Sig.) J. R. MAXWELL, *President.*

Attest:
(Sig.) W. T. ZELL, *Secretary.*

(Marked "**Government Exhibit No. 80, C. H. G.**")

This agreement made the fifteenth day of March, A. D. one thousand eight hundred and seventy (1870) between the Wilkes Barre Coal and Iron Company, parties of the first part and the Lehigh Coal and Navigation Company, parties of the second part.

Witnesseth, That the parties of the first part for and in consideration of the sum of One dollar to them in hand paid by the parties of the second part, the receipt of which is hereby acknowledged and of the performance of the covenants and agreements by the parties of the second part hereinafter mentioned to be kept and performed by them have covenanted and agreed and by these presents do covenant and agree to and with the parties of the second part as follows, to wit:

First. That they the parties of the first part shall and will deliver or cause to be delivered to the parties of the second part for transportation over the railroads and canals of the parties of the second
1002 part during the continuance of this agreement, all the coal produced from the lands and collieries of the parties of the first part now held or owned or which may be acquired by them in fee or otherwise and which may be destined for the markets of Philadelphia or New York or other eastern ports or for ports or points intermediate between Wilkes Barre and New York or Philadelphia accessible by said railroads or canals or other lines of transportation connecting therewith, now or hereafter, and all the lands and collieries of the parties of the first part shall be subject to and be bound by this agreement and shall not be released or discharged from the effect or operation thereof by any lease, sale or alienation of said lands or collieries or any part thereof by the parties of the first part.

Second. That the quantity of coal to be supplied by the parties of the first part to the parties of the second part for transportation under this agreement for all markets east of Mauch Chunk shall not be less than Four hundred thousand tons of 2240 lbs. each per annum and shall be delivered for the said purpose in quantities of Forty thousand tons per month or thereabouts from the First of April to the Thirtieth of November in each year and Twenty thousand tons per month for the remaining months of each year, or in like

monthly proportions if the quantity supplied for transportation as aforesaid shall exceed Four hundred thousand tons in any one year. 1003
And all the said coal for transportation under this agreement shall be delivered by the parties of the first part to the parties of the second part on the sidings of the railroad and its branches of The Lehigh Coal and Navigation Company or on siding convenient to the trains of the said Company. And the parties of the second part in consideration of the premises do covenant and agree to and with the parties of the first part as follows, to wit: That the parties of the second part shall and will furnish all the cars and motive power necessary for the transportation of all the coal supplied or offered from time to time by the parties of the first part provided that notice shall be given by said last mentioned parties to the parties of the second part on or before the first day of January in each year of the quantity of coal that the parties of the first part will produce and furnish monthly for transportation under this agreement, commencing on the first day of April next succeeding said notice. And the said parties do covenant and agree each with the other, as follows, to wit:

First. That the rates of transportation to be charged by the parties of the second part, on all coal destined to Trenton for shipment by canal or to tidal points east of Trenton shall be adjusted from time 1004
to time by the amount of the proceeds of the sales of said coal and in such manner that the parties of the second part shall receive as freight money one half of the said proceeds of all sales made, free on board vessels at points of shipment. And the parties of the second part shall have the right to transport the said coal by such roads or canals and deliver the same at such points of shipment on waters communicating with the Bay of New York as they may elect but if so delivered by them at any other point than Hoboken the settlement of freight shall be so adjusted that the parties of the first part shall be on the same footing as in the case of settlements for deliveries at Hoboken. All terminal charges and expenses of trans-shipment from cars to vessels and all office expenses at points of such trans-shipment and in the City of New York shall be paid by the parties of the first part and the parties of the second part shall pay all transportation charges between Phillipsburg and the said points of trans-shipment.

Second. That on all coal destined to all other points the rates of transportation over the railroads and the tolls on the canals owned or operated by The Lehigh Coal and Navigation Company shall be the regular rates charged other shippers by said Company for transportation between the same points which said regular rates shall not exceed the regular rates established and charged at the same time by the Lehigh Valley Railroad Company for transportation of coal 1005
between the same points, provided that the parties of the first part shall be entitled to a drawback of ten per cent on Railroad charges paid for transportation and Canal tolls paid under this section.

Third. That the lateral freights from the mines reached by the branch railroads of the parties of the second part to Nanticoke Junction shall be at the regular rates not exceeding two cents per ton per mile. But no lateral tolls shall be charged on coal from Sugar Notch to Nanticoke Junction or from sidings between Nanticoke Junction and the Empire mines when the coal is placed on the said sidings by the engines of the parties of the first part in trains ready

for shipment or from South Wilkes-Barre if the parties of the first part shall become lessees or owners of any collieries at Plymouth.

Fourth. That upon such portion of said coal as may be sent to tidal points by Canal from Coalport (the amount to be transported by Canal each year having been assented to by the parties of the second part) the parties of the second part shall receive for the transportation thereof from said sidings to said tidal points the same amount of freight money as they are entitled to receive under this contract for deliveries at Hoboken and in addition thereto a sum equal to the gain of the parties of the first part by reason of said shipments
1006 and deliveries by Canal, so that the parties of the first part shall realize the same net amount and no more from the sales of coal sent by Canal as from sales of coal sent by rail and delivered at Hoboken and all that may be realized in excess of said net amount shall be paid to the parties of the second part as freight money.

Fifth. That all bills for the transportation of coal shall be presented and paid weekly excepting on the coal sent to Trenton for shipment and to tidal points which shall be paid on or before the fifteenth of the month succeeding that during which the coal was transported, payment on account of which shall be made weekly as may be agreed upon from time to time, the final payment to be ascertained by the accounts rendered by the parties of the first part. And the parties of the second part shall by their Agents have access at all reasonable times to the books and accounts of the parties of the first part to verify the account of sales as rendered. The parties of the first part further covenant and agree to and with the parties of the second part that in case the amount of coal offered by the parties of the first part for transportation in any one year shall fall short of Four hundred thousand tons then the gross amount to be paid by them to the parties of the second part for transportation that year shall be equal to
1007 the gross amount that would have been paid had Four hundred thousand tons been offered and shipped at the regular rates of transportation as fixed from time to time by the parties of the second part, except when such deficiency is caused by strikes or disasters as hereinafter mentioned. And it is mutually understood, covenanted and agreed by and between the parties hereto that any failure on the one part to produce and offer for shipment or on the other part to transport to market any portion of said coal occasioned by strikes or turnouts of mines or laborers or Railroad employes, or by fire, flood or other unavoidable disaster shall not be deemed a violation of this contract on the part of either party. And it is further hereby mutually agreed that a certain article of agreement made by the parties hereto and dated the first day of June, A. D. 1865 and executed the Eighteenth day of August, A. D. 1865 be and the same is hereby cancelled and made void and of no effect excepting however and reserving to the lessees of the Sugar Notch collieries all the rights they may have under said article of agreement hereby cancelled. This agreement shall commence at the date hereof and shall continue for the term of fifteen years and until terminated by three years notice to be given at any time thereafter by either party to the other. PROVIDED

however that the parties of the second part shall have the right to terminate this agreement on the first day of January eighteen hundred and seventy two by giving the other party twelve months pre- 1008
vious notice to that effect.

Sixth. That if this contract be terminated on the first day of January A. D. one thousand eight hundred and seventy two in accordance with notice to be given by the parties of the second part as aforesaid, the parties of the first part shall be entitled to purchase and the parties of the second part will sell and convey to them for and in consideration of the sum of Three hundred and eighty thousand dollars, to be paid in cash all that part of the Nanticoke Railroad owned by the parties of the second part which lies east of the property of the Franklin Coal Company in the County of Luzerne including the river branch and the branch to the Everhart mines which said part of the said Railroad is further described and designated on the map or plan annexed hereto if the parties of the second part shall be authorized by law to sell the said premises. But the said right to purchase shall be contingent upon notice from the parties of the first part to the parties of the second part of their intention to purchase, to be given on or before the first day of July A. D. One thousand eight hundred and seventy-one, and if no such notice be given on or before the said date, the said right shall be regarded as waived and surrendered. And the parties hereto mutually covenant and agree that they will in the event of the notice last aforesaid being given, co-operate in all such lawful acts and means as may be necessary to 1009
enable the parties of the second part to grant and convey the said premises to the parties of the first part for the said sum of Three hundred and eighty thousand dollars, so as to vest in the parties of the first part a good and valid title to the same free from incumbrances, the parties of the first part paying all fees and expenses incident to such acts and means and all costs and expenses of conveyancing including the cost of revenue stamps. And in case the parties of the first part shall purchase the aforesaid premises in the manner and within the time aforesaid then all the assignable rights which the parties of the second part now have under a certain agreement made between them and the Union Coal Company dated the Seventh day of November A. D. one thousand eight hundred and sixty six shall be assigned to the said purchasers by the said parties of the second part hereto. But if the parties of the second part shall not have power to sell the aforesaid premises or secure the same to the parties of the first part (in case they shall purchase the same as aforesaid) free and discharged from all liens and incumbrances, then the possession thereof shall be given to the parties of the first part at an annual rent of twenty eight thousand dollars, to be paid by them in equal monthly payments to the parties of the second part until 1010
such disability be removed, provided the parties of the first part shall give to the parties of the second part satisfactory security for the payment of the said rent.

In witness whereof, the said parties have caused their respective corporate seals to be hereunto affixed, duly attested, the day and year first above written.

By order of the Board of Directors of
THE WILKES BARRE COAL & IRON CO.,
CHARLES PARRISH, *President.*

Attest:
S. M. WILLIAMS, *Secretary pro tem.*

By order of the Board of Managers of
THE LEHIGH COAL & NAVIGATION COMPANY.
By E. W. CLARK, *President.*

Attest:
F. MITCHELL, *Secretary.*

(Marked "**Government Exhibit No. 81, C. H. G.**")

*912 Mr. GORDON. I offer in evidence also the following extracts from the minutes of meetings of the managers of the Lehigh Coal and Navigation Company.

Mr. REYNOLDS. I reserve objections to these until I have had an opportunity to read them over.

Extract from the minutes of the meeting of the managers of the Lehigh Coal and Navigation Company, held April 5, 1897.

The president read a letter from the Parrish Coal Co. making application for permission to divert all or a part of the coal tonnage produced at their Plymouth colliery so as to make the shipments via the Pennsylvania Railroad instead of the Central Railroad of New Jersey. This colliery is on land of the Lehigh and Wilkes-Barre Coal Company, and by the terms of the lease of the Lehigh and Susquehanna Railroad to the Central Railroad Company of New Jersey all of this tonnage is bound to go over our road.

Under the present manner of regulating the coal trade the capacity for shipment over the lines of the Central Railroad of New Jersey is very much greater than the market requirements, and any diversion of this kind can easily be made up from the other collieries, to the advantage of the other shippers.

The Parrish Coal Co. offer to pay to this company ten cents per ton on all coal produced by them which is diverted from our railroad.

913 As the coal available for shipment over our railroad is of such a magnitude that it is estimated it will maintain shipments for more than one hundred years to come, the payment of ten cents per ton now proposed to be made at compound interest will equal more than fifty cents per ton fifty years hence, which is in excess of the sum we would be likely to receive as our share for the transportation of this coal.

After discussion—on motion—the president was authorized to consent to the diversion by the Parrish Coal Company of all or a part of the tonnage of their Plymouth colliery, for a period of one year from June 1st, 1897, in consideration of the payment to this company by the Parrish Coal Co. of ten cents per ton on all the coal so diverted: Provided, that the Central Railroad Company of New

* So numbered in original.

Jersey request that such diversion be made, and agree (1) that such action shall not be construed to affect in any way any of the existing agreements between our respective companies; (2) that the coal so diverted shall not be counted in the production of the Central Railroad of New Jersey; and (3) that the ten cents per ton paid to this Company by the Parrish Coal Co. shall not be considered in any way as a part of the gross receipts of the Lehigh and Susquehanna Railroad.

Extract from the minutes of the meeting of the managers of the Lehigh Coal and Navigation Company held June 7, 1897. 914

Referring to the application of the Parrish Coal Company for permission to divert a part of their tonnage from our railroad lines to those of the Pennsylvania Railroad Co., reported at the last meeting of the board, when such permission was authorized, the president stated that the consent of all the parties necessary had now been obtained, and shipments under this agreement would probably soon begin.

The president stated that he had also received an application, under date of June 4, 1897, from J. R. Maxwell, president, Lehigh & Wilkes-Barre Coal Company, in which he makes the following statement:

"The Lehigh & Wilkes-Barre Coal Co. is desirous of shipping its surplus nut coal west, and would like to have your consent to an arrangement similar to that made with the Parrish Coal Co. We could ship from 25,000 to 50,000 tons per annum. Kindly let me hear from you, and if agreeable to your company, I will forward the necessary notice from the Central Railroad Company of New Jersey consenting to the diversion of tonnage, as in the case of the Parrish Coal Co."

In considering this request, the president said that the same conditions existed in this case as in that of the Parrish Coal Company, and he would recommend that permission be granted, limiting the time in which such diversion should be made to the year 1897. 915

After discussion,

On motion, the president was authorized to consent to the diversion by the Lehigh & Wilkes-Barre Coal Company of a portion of their tonnage, not to exceed 50,000 tons, during the year 1897, in consideration of the payment to this company by the Lehigh & Wilkes-Barre Coal Company of 10 cents per ton on all coal so diverted: Provided, That the Central Railroad Company of New Jersey shall request that such diversion be made, and agree (1) that such action shall not be construed as affecting in any way any of the agreements existing between our respective companies; (2) that the coal so diverted shall not be counted in the production of the Central Railroad Company of New Jersey; (3) that the 10 cents per ton paid to this company by the Lehigh & Wilkes-Barre Coal Company shall not be construed in any way as a part of the gross receipts of the Lehigh & Susquehanna Railroad.

Extract from the minutes of the meeting of the managers of the Lehigh Coal and Navigation Company held March 6, 1899.

The president referred to the matter of our supply of empty coal cars, in relation to which the board has taken action on several occasions, and which has been for a long time a constant source of friction between this company and our lessees, and stated that he was pleased to report to the board that the matter was in much more
916 satisfactory shape than it had been at any time previously. The Central Railroad Company has never up to this time been willing to admit that our claim of 3.5 per cent of the total production of coal was due that they should recognize, or that the shipments as shown by a series of years justified us in demanding.

While asserting at all times that our contract gave us the right of not only this percentage, but to all the cars we needed, we have agreed as a temporary expedient, and for the sake of harmony, to accept 3.5 per cent. The Central Railroad Company having asked for large expenditures on the line of our road in the way of additional sidings, yard facilities, and extensions of track, opportunity was taken of their demand to bring about a settlement of the car question. After many conferences it was finally agreed that if we would waive for the present our claim for shortage on account of car supply in the past year, and promptly approve the requisitions for such work as we were legally bound to pay for under our lease, the Central Railroad Company would agree that we should have cars to enable us to ship at least 3.5 per cent of the total output, and that the number due should be adjusted monthly. The Central Company did not wish to make a formal agreement embodying this settlement, and it was arranged that a memorandum of agreement between counsel should be made to cover it. This was done, the memorandum being as follows:

917 "Memorandum of Understanding reached at interview held February 9th, 1899, at Philadelphia, Penna.

"First. The L. C. & N. Co. is to receive coal cars as called for sufficient for it to ship each month 3.5 per cent of the total allotted shipments of the anthracite field.

"Second. Any deficit in cars in one month to be made up in the succeeding month.

"Third. The claims for damages for lack of equipment in the past are not to be pressed during the year 1899 if cars are furnished in accordance with this understanding, and if cars are supplied throughout the year, the claims to be abandoned. In case cars are not supplied then the L. C. & N. Co. to be at liberty to reassert its claims.

"Fourth. The L. C. & N. Co. to assent promptly to all requisitions for construction work fairly within the first mutual covenant of the lease and in accordance with the custom of business between the two companies up to date.

"(Signed) S. D.
"(Signed) R. W. de F."

"Supplemental Note.

"It is suggested that in behalf of the L. C. & N. that if smaller sizes be hereafter excluded from the allotted tonnage, that it is to have in addition to the 3.5 per cent of the allotments, cars sufficient to make all possible shipments of the small sizes consistently with the requirements of other shippers of the L. & S. even though the total shipments of all sizes should thus be made to exceed 3.5 per cent 918
of the total output of the region."

(Copy of telegram.)

"NEW YORK, *Feb. 10th, 1899.*

"SAMUEL DICKSON,
"*131 South Fourth St., Philadelphia.*

"Mr. Maxwell ratifies and approves our agreement of yesterday. I understand that it is without prejudice to the lease and is not intended to vary its terms, but only to define and settle present and past obligations under it.

"(Signed) ROBERT W. DE FOREST."

Extract from the minutes of the meeting of the managers of the Lehigh Coal and Navigation Company held February 5, 1900.

The production of coal for the year just closed is the largest in the history of the company, and is equal to 3.4 per cent of the total anthracite shipments. This is somewhat under the percentage of 3.5 per cent which the Central R. R. Co. of N. J. agreed in our settlement of February last we should receive. The Central Company having failed to furnish cars to enable us to ship the amount agreed upon, we are at liberty to consider the agreement of February 9, 1899, as terminated, and the Central Company has been so notified.

During December complete embargoes were placed on our shipping coal over the Pennsylvania Lines, preventing us from making deliveries to many points in the Philadelphia market, where we have contracts calling for regular shipments. To overcome this difficulty and to increase our production arrangements were made with the Philadel- 919
phia & Reading Ry. Co. for shipments of coal over the lines of that company via Tamaqua. Notice was given to the Central Railroad Company that we proposed to avail ourselves of the option given in the lease to divert 25 per cent of our tonnage to other lines. The Central Company objected to our doing this, but have been told that so long as we were not furnished with all the cars we required and the coal was not delivered to the points to which we consigned it, we should continue to exercise our discretion in the matter. One immediate result has been that during the month of January we have been supplied with more cars than we could load, and our production for that month, as above reported, is the largest the company has produced.

Extracts from the minutes of meetings of the board of managers of Lehigh Coal & Navigation Company showing its cash advances and bond guarantees for the Lehigh & New England Railroad Co.

(Meeting March 20th, 1905.)

On motion,

The recommendation of the finance committee to make advances to the Lehigh & New England Railroad Co. of an amount not to exceed $100,000 for expenses necessary to the improvement of the property was approved and their action was adopted as the action of the board.

920 (Meeting October 7, 1907.)

The president stated that the Lehigh & New England Railroad Co. had a contract with Brown Bros. & Co. under which they leased certain equipment, payment for which amounting to $99,710 was due on the 8th instant. He further stated that in view of the contemplated purchase by that company of additional equipment and the creation of a car trust, Brown Bros. & Co had agreed to extend the time of payment under the contract for six months at six per cent, upon a cash payment of $20,000. As the railroad company has no available funds at this time to make the payment, it is necessary for the Lehigh Coal & Navigation Co. to advance this amount. This he recommended provided we were protected by an assignment of an equity in the equipment for that amount. Whereupon,

On motion,

The officers of the company were authorized to advance $20,000 in payment on account of the equipment trust obligation of the Lehigh & New England Railroad Co., papers in the matter to be prepared by counsel protecting the parties in interest.

(Meeting July 1st, 1907.)

On motion,

The officers of this company were authorized to loan to the Lehigh & New England Railroad Co. $100,000 at five per cent on their note, expenditures to be made in accordance with the following schedule, provided there is no commitment beyond $100,000, and that the same shall only be available when, in the opinion of the President of the
921 Lehigh Coal & Navigation Co. the expenditure contemplated is advisable.

(Meeting March 23, 1908.)

On motion,

Resolved, That the president be authorized to loan to the Lehigh & New England Railroad Co. a sum not to exceed $100,000 to be used in hiring certain box cars, coal cars or locomotives under the usual car lease by the provisions of which, on completion of the term and payment of rentals, title to the cars will be acquired by the Lehigh & New England Railroad Co., and when said lease has been assigned under the usual form of car trust and equipment certificates issued thereunder, the president is authorized to purchase the same at par to an amount not exceeding $450,000.

* * * * * * *

On motion,
Resolved, That the president be authorized to lend the Lehigh & New England Railroad Co. $50,000 taking their note on demand with interest at 6 per cent.

(Meeting February 10, 1908.)

The president submitted the following review of the financial condition of the Lehigh & New England Railroad Co., with suggestions for the rearrangement of its finances:

* * * * * * *

While it may not be thought wise to bring out a plan for the reorganization of the finances of the railroad company in the immediate future, we are, I think, agreed that some better arrangement than now exists for providing funds for necessary improvements and betterments should be considered, so as to be ready to launch it at the 922
proper time.

Whatever may be said against lending the credit of the Lehigh Coal & Navigation Co. for such purposes, I am confident that no plan for financing the needs of the railroad company can hope to be a success without its guarantee.

(Meeting April 27, 1908.)

Resolved, That the proper officers of this company be and they are hereby authorized to indorse on $450,000 Lehigh & New England equipment trust certificates, series A, the guarantee of this company in the following form:

"The Lehigh Coal & Navigation Co., for a valuable consideration, hereby gurantees the prompt payment at maturity of the principal of the within certificate and of the dividends thereon, according to the terms of said certificate and the dividend warrants thereto attached."

Extract from the minutes of the executive committee of the Lehigh Coal & Navigation Company held October 16, 1905.

A report submitted by the president at the last meeting of the 923
committee on the proposed extension of the Lehigh & New England Railroad system was given consideration, and after discussion, on motion, the president was authorized to make the necessary preliminary survey to determine the location and approximate cost of the new railroad lines as outlined in his report. * * *

Extracts from the minutes of meetings of the board of managers of the Lehigh Coal & Navigation Co. showing its promotion and financing of Lehigh & New England Railroad's extension from Danielsville to Tamaqua to connect with the Panther Creek Railroad.

(Meeting April 25, 1910.)

On motion,
Resolved, That the officers of the company, in connection with the executive committee, be authorized to arrange the details for the construction of a line of railroad connecting the Panther Creek Railroad at or near Tamaqua with the Lehigh & New England Railroad

at or near Lehigh Gap, whether by extension of the Lehigh & New England or by construction to be undertaken by an independent corporation, and to report to the board at as early a date as may be possible.

(Meeting September 26, 1910.)

The president stated that the Lehigh & New England Railroad Company had completed its surveys and estimates for the extension of its line of railroad from Danielsville to Tamaqua, to a point of connection with the Panther Creek Railroad of this company, and he asked the board to consider the building of this line, with such recommendations to the Lehigh & New England Company as would be desirable.

(Meeting October 4, 1910.)

The president stated that the line had been located on the ground
924 and adopted by the board of directors of the Lehigh & New England Railroad Company, in accordance with the authority granted to the officers of that company.

(Meeting October 10, 1910.)

* * * the following preamble and resolutions were, after discussion, unanimously adopted: * * *

Resolved, That this company approves of the construction by the Lehigh & New England Railroad Company of a lateral road or branch line from Danielsville, Pa., to Tamaqua, Pa., to a point of connection with the Panther Creek Railroad of the Lehigh Coal & Navigation Co.

Resolved further, That the officers of the company be, and they are hereby, authorized to advance to the Lehigh & New England Railroad such sums of money as may be required from time to time, not to exceed in the aggregate $1,750,000, taking the notes of the Lehigh & New England Railroad Company therefor, secured by a deposit of the general mortgage four per cent bonds of the Lehigh & New England Railroad Company in such amounts and on such terms as the officers of the company may determine.

* * * * * * *

The president stated that he had been negotiating with Brown Bros. & Co. for the sale of these bonds (Lehigh Coal & Navigation Co. collateral trust four and one-half per cent bonds), which they had offered to purchase at 97 and interest, their firm agreeing to divide equally with this company any premium that may be obtained from the sale of the bonds at a higher price than par.

After discussion it was,

On motion,

925 *Resolved*, That the president be, and he is hereby, authorized to sell to Brown Bros. & Co. $1,750,000 Lehigh Coal & Navigation Co. 20-year collateral trust 4½ per cent bonds, dated November 1, 1910, upon the terms mentioned.

(Meeting April 22, 1912.)

The president stated that the Lehigh & New England Railroad Company is short of funds to meet its obligations, consisting of payment on account of principal and interest due May 1st on Lehigh & New England equipment trust series B, and payment on account of principal and interest due June 1st on equipment trust series A, amounting to $98,850, and unpaid interest on its bonds due April 1, 1912, amounting to $74,190, in addition to which the company owes the Bethlehem Steel Co. for rails bought for rerailing the line from Danielsville to Pen Argyl, to take care of traffic coming from Tamaqua extension, $66,362.05, making a total of $239,402.05. The shortage in funds of the Lehigh & New England Railroad Company is accounted for by a deficit in its earnings during the past few years and payments made on account of principal of equipment trust series A, thereby exhausting its working capital. To carry the company over the period of the construction of the Tamaqua extension the president recommended that the board authorize a temporary loan, with interest at 5½ per cent, to the Lehigh & New England Railroad Co., the amount not to exceed $200,000.

After discussion it was,

On motion,

Resolved, That the Lehigh Coal & Navigation Co. loan to the Lehigh & New England Railroad Co. on demand note, with interest at 5½ per cent per annum, on such sums of money as may be required during the next three months up to an amount not to exceed in the aggregate two hundred thousand dollars ($200,000). 926

(Meeting December 23, 1912.)

Referring to the recommendation of the executive committee, the president stated that this company holds $2,885,000 Lehigh & New England Railroad Company general 4 per cent bonds, due April 1, 1958, which the Lehigh & New England Railroad Co. has offered to purchase on a five per cent basis and a premium of 2½ per cent and accrued interest, and $700,000 Lehigh & New England Railroad Company demand notes, both of which obligations the railroad company will pay off if this company will agree to subscribe at par to capital stock to the amount of $3,145,000; and he recommended that this subscription be authorized.

After discussion it was,

On motion,

Resolved, That the officers of the company be, and they are hereby, authorized to subscribe and pay for at par ($50 per share) capital stock of the Lehigh & New England Railroad Company to the amount of $3,145,000.

Extract from the minutes of a meeting of the board of managers of the Lehigh Coal & Navigation Co., held February 1, 1897, showing financial relations with the Lehigh & Hudson River Railway Company. 927

The president further reported that the stockholders of the Lehigh & Hudson River Railway Company have authorized the sale of $500,000 of their five per cent 30-year general mortgage bonds to this

company, and the Central Railroad Company of New Jersey ($250,000 each) at 90 per cent. Our respective companies already own the following amounts of these bonds:

Central Railroad Company of New Jersey	$281,000	
The Lehigh Coal & Nav. Co.	280,000	
		$561,000
Amount to be purchased		500,000
Amount owned by the two companies after purchase		1,061,000

The Central Railroad Company are willing to join us in the purchase, and it is proposed that we jointly guarantee the same, and sell them at not less than par.

* * * * * * *

The transaction above outlined would probably yield us a profit of from $20,000 to $25,000 and would also permit of the repayment of us by the Lehigh & Hudson Co. of loans amounting to $87,500 and unsettled claims of about $10,000, as well as provide for the payment of other notes of the Lehigh & Hudson Co. which we have undertaken to float for them. * * *

On motion, it was

928 *Resolved*, That this company hereby agrees to join the Central Railroad Company of New Jersey in guaranteeing the prompt payment of the principal and interest of the general mortgage five per cent thirty-year bonds of the Lehigh & Hudson River Railway Co. to the value of $1,000,000.

Extract from the minute upon the death of Mr. Edward W. Clark adopted at a meeting of the board of managers of the Lehigh Coal & Navigation Co., April 18, 1904.

* * * * * * *

As one result of his services, the most valuable coal properties in the Wyoming Valley are permanently tributary to the Lehigh & Susquehanna Railroad, and the railroad itself is operated by the Central Railroad Company of New Jersey under a lease which makes it to its own advantage to develop the business and the resulting revenue to the Lehigh Company to the greatest possible extent.

929 Mr. GORDON. I also offer certain extracts from the minutes of meetings of the board of directors of the Reading Company.

Mr. REYNOLDS. I reserve the same opportunity to scrutinize those exhibits and make any proper objections at the next meeting.

The extracts offered are as follows:

Extract from the minutes of a meeting of the directors of Reading Company held April 12, 1901.

The following minute, defining the duties of Mr. W. R. Taylor, vice president, was unanimously adopted.

* * * * * * *

The nomination of all officers in the secretary's, treasury, and accounting departments of this company, and of its owned and controlled companies, except the Central Railroad Company of New

Jersey, shall be made by the heads of the said departments to the vice president, who shall submit them, with his approval or disapproval, and with a recommendation of amount of salary, to the president for approval, and for confirmation by the board under regulations to be hereafter adopted.

He shall recommend additions to the clerical force in said departments when necessary, and may at any time direct the discharge of any employee therein if, in his judgment, the interests of the company require it.

Extract from the minutes of a meeting of the directors of Reading Company held March 19, 1902. 930

The president reported that Mr. Charles H. Warren had tendered his resignation as vice president of the Central Railroad Company of New Jersey to take effect June 1, 1902, and that as president he had appointed Mr. W. G. Besler as general manager of the Central Railroad Company of New Jersey, who will assume the duties at once.

Extract from the minutes of a meeting of the directors of Reading Company held on September 17, 1902.

The president presented the following report of the committee appointed at the meeting on June 18th:

"The undersigned, appointed a committee of the Reading Company to consider the proper division of the salaries of those officers who have duties in connection with more than one of the three Reading companies, make the following recommendation, viz:

"That the salaries of persons whose names are on the attached schedule should be divided as therein stated:

* * * * * *

Division of salaries of such of the officers of the several Reading companies as have duties relating to more than one of these companies.

931

Name.	Occupation.	Reading.	Railway.	C. & I. Co.
		Per cent.	*Per cent.*	*Per cent.*
George F. Baer	President	50	25	25
Joseph S. Harris	Contract	.....	100	.....
C. E. Henderson	Vice president	.....	50	50
W. R. Taylor	Vice president	40	40	20
W. A. Church	Treasurer	40	30	30
D. Jones	Comptroller	40	60	.....
J. D. Campbell	General solicitor	30	50	20
Charles Heebner	Assistant general solicitor	.....	50	50
J. D. Loomis	Real estate agent	35	65	.....
C. W. Klink	Assistant real estate agent	35	65	.....
J. D. Landis	Purchasing agent	.....	70	30

"The services of all of the other general officers are given to but one company."

Whereupon, on motion duly seconded, the report was accepted and the recommendations of the committee were approved.

Extract from the minutes of a meeting of the directors of Reading Company held January 18, 1911.

Upon motion duly seconded, the following minute was adopted:

Whereas in and by section 12 of article 2 of the general mortgage of Reading Company and the Philadelphia & Reading Coal & Iron Company, dated January 5, 1897, it is provided that "the Reading Company shall not, and will not, in any year declare or pay any dividends upon its stock, either common or preferred, until, or unless, prior to,
932 or simultaneously with, such declaration, it shall deliver to the trustee a statement in writing, under its corporate seal, showing the amount of anthracite coal mined from lands owned by the coal company and mortgaged hereunder, during the year next preceding the declaration of such dividend, and simultaneously shall pay to the trustee hereunder a sum equal to five cents per ton on all coal so mined in such next preceding year, if the aggregate of dividends so declared shall be equal to or shall exceed such sum, and otherwise such lesser sum as shall be equal to the aggregate of dividends so declared;" and

Whereas Reading Company, on December 21, 1910, declared a dividend of three per cent on its common stock outstanding viz. upon $70,000,000, the aggregate of which dividend will amount to $2,100,000, payable on February 1, 1911; and

Whereas during the year ended December 31, 1910, there have been mined from the lands owned and controlled by the Philadelphia & Reading Coal & Iron Company, and mortgaged under the said general mortgage, anthracite coal amounting to 9,192,982.20 tons, upon which, under the terms of the said general mortgage, the amount payable to the trustees thereof is $459,649.11.

Resolved, That the proper officers of the company be, and they are hereby, authorized to deliver to the trustee, a statement in writing, under the corporate seal of the company, showing that during the year
933 ended December 31, 1910, there were mined from lands owned and controlled by the Philadelphia & Reading Coal & Iron Company and mortgaged under the said general mortgage, 9,192,982.20 tons of anthracite coal, and that the said officers be, and they are hereby, authorized to pay to the trustee of the said mortgage the sum of $459,649.11, being five cents per ton upon said coal, said sum to be used and applied as provided in the said mortgage.

On motion, duly seconded, the following minute was adopted:

Whereas Reading Company, in pursuance of the provisions of article 1 of section 12 of the general mortgage of Reading Company and the Philadelphia & Reading Coal & Iron Company, dated January 5, 1897, proposes to apply the sum of $459,649.11 (being the sinking fund which accumulated from setting apart five cents per ton upon all anthracite coal mined from lands owned and controlled by the Philadelphia & Reading Coal & Iron Company and mortgaged under the said general mortgage, during the year ended December 31, 1910, and being intended to represent the depletion of the said land caused by the mining of the said coal and the consequent depreciation of the

value of the amount due by the Philadelphia & Reading Coal & Iron Company to Reading Company), towards the purchase and cancellation of bonds secured by the said general mortgage;

And whereas the funds out of which the said general mortgage bonds are proposed to be purchased were derived from business which resulted from the mining of the said coal and the consequent depreciation in the estate of the Philadelphia & Reading Coal & Iron Company; 934
therefore,

Resolved, That the indebtedness of the Philadelphia & Reading Coal & Iron Company be reduced by the amount of the par value of the general mortgage bonds which shall be so purchased and cancelled, and that the officers of the company be and they are hereby authorized to make proper entries upon the books of Reading Company in accordance herewith.

Extract from the minutes of a meeting of the executive committee of Reading Company, held October 13, 1898.

Mr. Harris stated that we have acquired control of the Wilmington & Northern Railroad by purchase of the majority interest of the stock. This railroad has heretofore exchanged a large amount of business with us and has furnished a market for 100,000 tons of coal. It has the right to use to a considerable extent our facilities in Reading. It has a good position in Birdsboro, in Coatsville and in Wilmington, which towns are the seat of important industries. We were promised several years ago by the parties who owned the controlling interest in this stock that if they ever should be willing to sell their holdings we should have an opportunity to buy. The decision to sell was reached this summer, and we were offered the stock at the price bid by other 934½
responsible parties. The executive committee of the Reading Company, after careful consideration, deemed it adverse to the Reading's interests to allow this property to pass to the control of alien interests and agreed to make the purchase which has been consummated.

Subject to the production of the various documents called for, to be 935
spread upon the minutes of this session, the Government rests.

Mr. REYNOLDS. The defendants give notice that they will hold a meeting for the taking of testimony at 11 o'clock a. m. on Tuesday, the 17th of March, 1914, at the Reading Terminal offices in Philadelphia, Pa.

Adjourned until Tuesday, March 17, 1914, at 11 o'clock a. m.

Return of examiner.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

THE UNITED STATES OF AMERICA, plaintiff, *v.* READING COMPANY AND OTHERS, defendants.	Sept. sessions, 1913. In equity.	No. 1095.

I, Charles H. Guilbert, duly appointed by the court as examiner to take the testimony in the above-entitled cause, either within or without this district, and to report the same to the court, do hereby certify that, beginning, pursuant to notice, on February 9, 1914, and continuing from time to time thereafter, I have taken or caused to be taken and recorded all the testimony of the witnesses produced and the exhibits offered on the part of the plaintiff, on the examination in chief, as well as all the proceedings connected therewith, the signing of the testimony by the witnesses respectively being waived by counsel; and that the foregoing is a complete and true record of all such testimony, exhibits, and proceedings, the same beginning with the proceedings before the examiner on February 9, 1914, and ending with the proceedings on March 9, 1914, and including Government Exhibit No. 1 to Government Exhibit No. 81, inclusive.

In witness whereof I have hereunto set my hand this 14th day of March, 1914.

C. H. GUILBERT, *Examiner.*

Minnesota State Library.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

G. T. BRYANT ET AL.,

vs.

THE UNITED STATES OF AMERICA.

PETITIONERS' MOTION.

Wm. H. ATWELL,
Attorney for Petitioners, G. T. Bryant et al.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

G. T. BRYANT ET AL.,

vs.

THE UNITED STATES OF AMERICA.

PETITIONERS' MOTION.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now G. T. Bryant, Z. L. Risley and S. J. Powell and show to the Court:

I.

That in the Abilene Division of the Northern District of Texas, they were indicted, with fifty-two others, in an indictment containing eight counts, for various alleged oppositions to the Government; that the trial lasted many weeks and at the conclusion thereof, fifty-two of the said defendants were acquitted and these petitioners were acquitted of seven counts of the said indictment and convicted under one count; that thereafter they duly and seasonably prosecuted their writ of error to and in the United States Circuit Court of Appeals for the Fifth Circuit, which Court, on March 24th, 1919, affirmed the judgment of the lower court and on April 30th, 1919, overruled an application for a rehearing and on May 5th, 1919, granted thirty-five days to present an application for a writ of certiorari to the Supreme Court of the United States.

That thereafter said application for a writ of certiorari was duly made, and forwarded, together with a check for $25.00, and certain certified proceedings in the said Circuit Court of Appeals, together with all other necessary papers, save and except the testimony and record of the lower court, and, that these papers were received by the Honorable James D. Mayer, Clerk of this Honorable Court, on May 27th, 1919, but that the said Clerk refused to file the said application for the reason that "the said record of the lower court had not been certified as required by the rules."

II.

That thereafter, on June 19th, 1919, the Honorable Richard W. Walker, United States Circuit Judge for the Fifth Circuit, entered an order staying the mandate in the said Court of Appeals until November 1, 1919, so that these petitioners could present their petition to this Honorable Court.

III.

That the Honorable, the Solicitor General of the Department of Justice of the United States, on May 17th acknowledged receipt of the petition for certiorari.

IV.

That attached hereto are copies of the orders and letters and acknowledgments herein referred to.

V.

That these petitioners are indigent and they pursued their writ of error in the Circuit Court of Appeals under and by virtue of the Act of June 25th, 1910, Chapter 435, page 45, First Volume Federal Statutes, Annotated, reading, in part, as follows:

"That any citizen of the United States entitled to commence or defend any suit or action, civil or criminal, in any part of the United States, may, upon the order of the Court, commence and prosecute or defend to conclusion any suit or action, or writ of error, or an appeal to the Circuit Court of Appeals, or to the Supreme Court in such suit or action, including all appellate proceedings, unless the trial court certify in writing that in the opinion of the court such an appeal or writ of error is not taken in good faith, without being required to prepay all fees or costs or for the printing of the record in the appellate court or give security therefor" (36th Statute at Large, 866).

VI.

That the stenographic record of the testimony and proceedings in the lower court covered between 3,500 and 4,000 pages and was transmitted to the Court of Appeals in typewritten form and is now on file with the Clerk of that Court properly certified and attested, and that petitioners are too poor to have the same printed.

VII.

Petitioners show that the Clerk of this Honorable Court refuses to file this application for certiorari, first, because the same was not accompanied by said record; and now claims that because, more than ninety days have passed since the overruling of the motion for rehearing in the United States Circuit Court of Appeals, he can not now file it.

VIII.

These petitioners contend that they did apply as shown herein within the said ninety days for such writ

of certiorari and did everything they could to perfect such application.

IX.

Wherefore, petitioners respectfuly pray that an order be directed to Honorable Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals at New Orleans, directing him to certify and forward forthwith the original typewritten record in the cause of G. T. Bryant et al. vs. United States of America, and that the Clerk of this Honorable Court be directed to file these petitioners' petition for writ of certiorari which has been in his hands since May, 1919.

Respectfully submitted.

R. H. Arnell,

.....

Attorney for Petitioners, G. T. Bryant et al.

Service and copy hereof is hereby acknowledged.

.....

Solicitor General of the United States.

EXHIBITS.

OFFICE OF THE SOLICITOR GENERAL
SG-WJH-WMS.
WASHINGTON, D. C.
May 17, 1919.

W. G. H.
186233-2-25
Wm. H. Atwell, Esq.,
Attorney at Law,
Dallas, Texas.
Sir:

I beg to acknowledge the receipt of your letter of the 10th instant, enclosing copies of your petition for certiorari and brief.

As you request, I am forwarding to the Clerk of the Supreme Court, duly acknowledged, the original copy of the petition.

Respectfully,
ALEX C. KING,
Solicitor General.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.
May 27, 1919.

William H. Atwell, Esq.,
Dallas, Texas.
Dear Sir:

Your letter of the 22nd instant was received on the 26th, together with original petition, certified proceed-

ings in the Circuit Court of Appeals, check for $25.00, order for appearance for the petitioner, copies of briefs for the plaintiff in error and defendant in error in the court below, and certificate of Mr. Mortimer in regard to said briefs, in the case of G. T. Bryant et al., petitioners, vs. the United States, and I have telegraphed you that the case could not be docketed without a complete certified copy of the record as required by the rules. I will hold the papers above acknowledged until the receipt of the record, as required by the rules, or you present your application to the court for an order directing the clerk of the lower court to send up his original files.

Yours, truly,

TFD. JAMES D. MAHER, Clerk.

By W. R. J., Ass't.

COPY

No. 3250.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

G. T. BRYANT ET AL.,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Considering the motion of the plaintiffs in error in the above numbered and entitled cause for a further

stay of the mandate therein, it is ordered that the issue of the mandate in said cause be and it is hereby stayed until the first day of November, 1919, said mandate to be issued upon the expiration of said period unless the petition of the plaintiffs in error for a writ of certiorari shall then have been submitted to the Supreme Court.

June 9th, 1919.

R. W. WALKER,
United States Circuit Judge.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

August 7, 1919.

William H. Atwell, Esq.,
Dallas, Texas.
Dear Sir:

Your letter of the 4th instant, in reference to the case of Bryant vs. The United States, duly received.

I enclose herewith a copy of the Act of September 6, 1916, and call your attention to Section 6 thereof. I do not understand how the staying of the mandate can stop the operation of the statute.

Your truly,
JAMES D. MAHER, Clerk.
By W. R. J., Ass't.

LM.
Enclosure.

The section referred to above reads as follows:

"That no writ of error, appeal, or writ of certiorari intended to bring up any cause for review by the Supreme Court shall be allowed or entertained unless **duly applied for within three months** after the entry of the judgment or decree complained of."

Minnesota State Library,
St. Paul, Minn.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

ARTHUR CRANE

vs.

THE UNITED STATES OF AMERICA.

PETITIONER'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, ETC.

ARTHUR CRANE,
Attorney in Pro. Per.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

ARTHUR CRANE

vs.

THE UNITED STATES OF AMERICA.

PETITIONER'S MOTION.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Arthur Crane, respectfully shows that:

I.

In the Southern Division of the United States District Court for the Northern District of California he was indicted, by an indictment of over 200 folios, with a violation of C. C. U. S. 215, in that he "was the author of certain books" (not specified or identified) and "pretended to be a public philanthropist" and "represented that he was an attorney of the Supreme Court of the United States" and devised a scheme to defraud "by means of hypocritical religion." There was no direct allegation that said or any representation was untrue and fraudulent, leaving same to be inferred. Defendant entered four pleas: "No jurisdiction" (because

Post Office Department had already tried and acquitted him of same charge and alleged offense): "Former Acquittal," "Once in Jeopardy," and "Not Guilty." The trial Judge (Hon. Maurice T. Dooling) held that defendant had a right to jury trial on the plea of "Not Guilty" only, and sustained a general demurrer to the other pleas, notwithstanding that defendant had been tried and acquitted by the Post Office Department of the same charge and alleged offense.

At the trial the defendant was convicted and sentenced to two years' imprisonment, and prosecuted his Writ of Error to the U. S. Circuit Court of Appeals for the Ninth Circuit, which court, on July 7, 1919, affirmed the judgment, and on October 14, 1919, denied his application for rehearing.

Thereafter, to wit, October 22, 1919, a petition for writ of certiorari, together with written appearance of counsel and the sum of $25, was tendered to the clerk of this honorable court. Said petition was without the printed certified copy of the record required by the rules, and said clerk for said reason, and no other, refused to file same or accept said filing fee.

The original record in the files of the said Circuit Court of Appeals is very voluminous and your petitioner is now indigent and wholly unable to bear the cost of printing same.

II.

Your petitioner has fully disclosed to counsel all the facts of said case, and has been by him advised and verily believes that he has a meritorious case for the writ of certiorari therein prayed for, and more especially in the following particulars:

(*a*) The jurisdiction of the Circuit Court of Appeals, as well as of the court below, was called in question and should have been ousted, for the reason that another department of the Government of the United States, to wit, the Post Office Department, had already assumed and fully exercised juris-

diction by trying defendant on the same charge, for the same alleged crime, and by acquitting him thereof.

(*b*) The opinion in petitioner's case conflicts in its statement of law with doctrines laid down in other jurisdictions. For example, said opinion holds, decides, or assumes all the following doctrines, which your petitioner is so as aforesaid advised are erroneous and conflict in statement of law with the doctrines of other jurisdictions:

Jurisdiction.—Between departments of the Government.—

The Circuit Court of Appeals has jurisdiction to affirm a conviction of the District Court, even though another department of the Government (The Postmaster General) had previously taken jurisdiction of the same alleged offense and had tried and acquitted the defendant.

Pleading.—In an indictment for devising a scheme to obtain money fraudulently by sending through the U. S. mails a book alleged to contain false and hypocritical doctrines, the fraud, and hypocritical nature of the doctrines may be inferred and do not need to be directly alleged.

Trial by Jury.—Where a defendant enters pleas of "Not Guilty," "Former Acquittal" and "Once in Jeopardy," he is not entitled, as a matter of right, to a trial by jury, except on the plea of "Not Guilty."

Evidence.—Although defendant was charged with bad faith in his religious teachings, it was no error to exclude testimonials and newspaper endorsements which he had received and which were of such a nature that good faith might manifestly be predicated upon them.

Instructions.—Defendant has no absolute right to have the jury instructed on the theory of his defense, and the omission of such instruction is not reversible error.

(*c*) The indictment was wholly insufficient, in that the alleged crime was only suggested by inference, and it was not even stated which of defendant's books, containing "false and hypocritical doctrines," he was accused of sending through the United States mails. It was, for example, alleged that defendant represented himself to be a counsellor of the Supreme Court of the United States, leaving it to be inferred that such representation was false, whereas, as the district attorney must have known, said representation was true in fact.

(*d*) The refusal of the court below to allow a bill of particulars, stating which book or books were referred to in the indictment, was a gross abuse of discretion.

(*e*) That defendant should be imprisoned for believing and teaching certain religious doctrines (alleged in indictment to be false and hypocritical) is contrary to the Constitution of the United States and to the spirit of American traditions.

III.

Your petitioner has no money or property, and can give no security with which to carry on or proceed in the matter of said petition, and your petitioner is unable, by reason of his poverty, to proceed in said matter.

Wherefore your petitioner prays that this honorable court do permit and allow him to proceed in said matter, *in forma pauperis*, and authorize the original record to be sent up from said Circuit Court of Appeals.

ARTHUR CRANE,
Petitioner in Pro. Per., and
Counsel of this Honorable Court.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Arthur Crane, being first duly sworn, deposes and says: I am the petitioner named in and making the foregoing petition; I have read the same and know the contents thereof and the same is true to my own knowledge.

ARTHUR CRANE.

Subscribed and sworn this — day of October, 1919, before me.

WM. R. STANSBURY,
Notary Public, District of Columbia.

Service and copy hereof is hereby acknowledged.

Solicitor General of the United States.

Minnesota State Library,
St. Paul, Minn.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. , Original.

WILLIAM DUHNE, Complainant,

vs.

THE STATE OF NEW JERSEY ET AL., Defendants.

MOTION TO FILE ORIGINAL BILL

and

ORIGINAL BILL OF COMPLAINT.

EDWARD HOLLANDER,
Attorney for Complainant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. , Original.

WILLIAM DUHNE, COMPLAINANT,

vs.

THE STATE OF NEW JERSEY ET AL., DEFENDANTS.

MOTION TO FILE ORIGINAL BILL.

Now comes William Duhne, through his attorney, Edward Hollander, and moves the Court for leave to file the bill of complaint herewith exhibited, in a controversy which has arisen between the complainant and the defendants with regard to the enforcement of the Eighteenth Amendment to the Constitution of the United States and the act of Congress of October 28, 1919, known as the National Prohibition Act, and that proper process may issue thereon, notifying the defendants and each of them that such a bill has been filed and that said defendants and each of them may appear and defend same.

WILLIAM DUHNE,
By EDWARD HOLLANDER,
Attorney.

IN THE

SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

WILLIAM DUHNE, COMPLAINANT,

against

THE STATE OF NEW JERSEY, A. MITCHELL PALMER, ATTORNEY GENERAL OF THE UNITED STATES; JOSEPH L. BODINE, UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF NEW JERSEY, AND DANIEL C. ROPER, COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, DEFENDANTS.

BILL OF COMPLAINT.

To the Honorable the Justices of the Supreme Court of the United States:

The complainant for his bill of complaint herein, by Edward Hollander, his solicitor, respectfully alleges as follows:

I.

The complainant is a citizen of and a resident of the State and district of New Jersey.

II.

The State of New Jersey is a sovereign State and one of the United States of America.

III.

The defendant A. Mitchell Palmer is the Attorney General of the United States of America.

IV.

The defendant Joseph L. Bodine is the United States attorney in and for the district of New Jersey.

V.

The defendant Daniel C. Roper is the Commissioner of Internal Revenue of the United States of America.

VI.

The complainant is and has been for many years engaged in the business of selling at retail beer, wine, and other malt, vinous, and spirituous liquors and intoxicating liquors, for beverage purposes at No. 5160 Hudson Boulevard, in the town of West New York, county of Hudson, State and district of New Jersey, and purposes and intends to continue said business for a further period of many years at said address. He has conducted his business aforesaid under and in accordance with licenses duly had and obtained from the State of New Jersey and from the United States of America, respectively.

VII.

On or before the 19th day of December, 1917, the Congress of the United States adopted a joint resolution proposing an amendment to the Constitution of the United States in words and figures as follows:

> *"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following amendment to the Constitution be and hereby is, proposed to the States, to become valid as a part of the Constitution when ratified by the legislatures of the several States as provided by the Constitution:
>
> "'ARTICLE * * *
>
> "Section 1. After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.
>
> "Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.
>
> "Section 3. The article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.'"

VIII.

The resolution aforesaid was not adopted by the vote of two-thirds of both houses of the Congress aforesaid, that is to say, two-thirds of the members chosen every second year in

the House of Representatives by the people of the several States, and two-thirds of the Senators elected by the people of the several States; but nevertheless it was communicated to the legislatures thereof, and thereafter and at divers times between the said 19th day of December, 1917, and the 28th day of October, 1919, the legislatures of all the States in the Union, except the States of Connecticut, New Jersey, and Rhode Island, adopted resolutions purporting to ratify and adopt the resolution of Congress aforesaid as an amendment to, and a part of, the Constitution of the United States, but the said States of Connecticut, New Jersey, and Rhode Island, have hitherto refused to adopt any such resolution.

IX.

If the proposed amendment aforesaid had been lawfully proposed by the Congress and ratified by the legislatures of the several States it would have been and become, and would now be, the Eighteenth Amendment to the Constitution of the United States.

X.

Your petitioner is further advised by counsel and verily believes, and upon such information and belief alleges, that neither the people of the United States, nor any of them, nor their representatives in Congress assembled, nor any of them, nor the peoples of the several States, nor any of them, nor their representatives in the several legislatures thereof assembled, nor any of them, ever had, or now have, any authority or lawful power to propose, ratify or adopt the so-called Eighteenth Amendment to the Constitution of the United States, and that the said so-called Eighteenth Amendment is null, void, and of none effect, in law or otherwise, as an amendment to the Constitution of the United States of America, as will more particularly appear from the following

enumeration of the limitations upon their several powers which impliedly but necessarily exist and inhere in the federal and the republican form of the governments of the United States and of the several States, and of the limitations upon their said several powers, which have been expressly declared and ordained by the peoples of the United States and the several States in their several Federal and State constitutions.

LIMITATIONS.

Impliedly But Necessarily Existing in the Federal Form of Government.

A.

In a federal union of sovereign States the sovereign rights, liberties and powers of the several States are wholly reserved to the States, except in so far as they may be expressly prohibited to the States or delegated to the Union by the covenant of union, and the sovereign rights, liberties, and powers so reserved cannot be taken, impaired or abridged, and the covenant of union cannot be so amended as to take, impair or abridge them, without the unanimous consent of each and all of the States so federated. Until unanimous consent is so obtained, as aforesaid, the covenant of union is not so amended, even as to the consenting States, by any act of any number of the members of the union, even the largest majority.

The so-called Eighteenth Amendment assumes to impair and abridge the sovereign rights, liberties and powers of the several States of the United States, in that it assumes to enable the United States to exercise sovereign powers of internal government and police within the territorial jurisdiction of all the States, although their unanimous consent thereto has not been first had and obtained.

By reason of the premises the so-called Eighteenth Amendment is null, void, and of none effect, in law or otherwise, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

LIMITATIONS

Impliedly But Necessarily Existing in a Republican Form of Government.

B.

Absolute and arbitrary power over the rights and liberties of the people exists nowhere in a republic, not even in the largest majority. Each and all of the people thereof possess and enjoy certain natural and inherent rights and liberties which are inalienable by their own act and which cannot be taken from them without their consent by the act of others. In uniting to form a republic the people do not surrender, waive, or in anywise diminish, either their rights or their liberties. On the contrary, a republican form of government is formed and exists solely for the purpose of protecting them in the enjoyment thereof. In a republic, therefore, the natural and inherent rights and liberties of the people are necessarily excepted out of the general powers of government and remain at all times indestructible.

Among the rights and liberties so possessed, reserved and enjoyed by the people in a republic are these:

1. The liberty to use their natural powers and to gratify their natural desires in the pursuit of happiness, in so far as injury to others shall not result therefrom;

2. The right to be heard in their own behalf before an impartial and competent tribunal or court whenever their liberties or rights shall be in question (due process of law);

3. The right to be justly compensated when their private property is taken, or destroyed, or in anywise injured or impaired, for a public purpose or for the public benefit.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the rights and liberties herein enumerated, in that it assumes to deprive all the people of the United States and of the several States thereof of the liberty to use alcoholic beverages in moderation and sobriety and under circumstances in which no injury results, or can result, to others therefrom, and in that it assumes to deny to all the people of the United States and of the several States thereof the right to be heard before an impartial and competent tribunal or court in behalf of their liberty to use alcoholic beverages when that liberty is in question, and in that vast investments of private property lawfully made by many of the people in the production and distribution of alcoholic beverages, and oftentimes made by them under the express sanction and license of the people of the United States and of the several States thereof, will be injured, impaired, or utterly destroyed for an alleged public benefit without any compensation whatsoever.

By reason of the premises the so-called Eighteenth Amendment is beyond any lawful power or authority *(ultra vires)* resident in the people of the United States, or in the peoples of the several States thereof, or even in the largest majority thereof, and is, therefore, null, void, and of none effect, in law or otherwise, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

C.

In a republic the legislators thereof are the trustees and servants of the people whom they represent, and possess no powers which are not possessed by the people themselves.

The so-called Eighteenth Amendment is, as has been hereinbefore and in paragraph B hereof more fully set forth, repugnant to, and violative of, all the rights hereinbefore and in paragraph B enumerated, and is therefore in excess of the powers of the people of the United States and of the peoples of the several States.

By reason of the premises the act of the Senators and members of the House of Representatives of the Congress of the United States in assuming to propose, and the act of the legislators of the several States in assuming to ratify, the so-called Eighteenth Amendment, being in excess of the powers of the people of the United States and of the peoples of the several States thereof, was in excess of their own delegated powers, and as such was null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully proposed by the Congress of the United States or lawfully ratified by the legislatures of the several States, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

D.

In a republic the legislators thereof are the trustees and servants of the people and act only with a delegated authority. No arbitrary or absolute powers of government are delegated to them, and no power is delegated to them to injure, impair, or abridge the natural and inherent rights of the peoples whose delegates they are. In particular no power or authority is delegated to them to injure, impair, or abridge the natural and inherent rights and liberties of the people hereinbefore and in paragraph B hereof enumerated.

The so-called Eighteenth Amendment is, as has been hereinbefore and in paragraph B hereof more fully set forth, repugnant to, and violative of, all the rights and liberties of the people hereinbefore and in paragraph B hereof enumerated.

By reason of the premises the act of the several members of the Congress of the United States and of the several legislators of the several States in assuming to propose and ratify the so-called Eighteenth Amendment and thereby to injure, impair and abridge the natural and inherent rights of the peoples whom they represented was beyond their lawful power and delegated authority *(ultra vires)* and was, therefore, null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully proposed, ratified, or adopted by them, or any of them, and never became, and is not now, an amendment to, or part of, the Constitution of the United States.

E.

In a republic, wherein the Constitution is written and adopted by the people, the sole power to change their form of government resides solely in the people, and the legislators thereof are clothed with no power or authority, implied or otherwise, to impair or surrender in any particular the lawful and sovereign powers of the several States which they severally represent.

The so-called Eighteenth Amendment assumes to impair and abridge the sovereign powers possessed by the several States, in that it assumes to authorize the United States to exercise sovereign powers of internal government and police within their territorial jurisdiction, and to that extent assumes to operate as a surrender by the several States to the United States of a portion of their sovereign powers.

By reason of the premises the act of the legislators of the several States of the United States, wherein all the constitutions have been written and adopted by the people, in assuming to ratify the so-called Eighteenth Amendment, surrender to the United States the sovereign power to regulate in part the internal government and police of the several States

of the Union, was in excess of their lawful power and authority (*ultra vires*) and was, therefore, null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully ratified by them, or any of them, and never became, and is not now, an amendment to, or part of, the Constitution of the United States.

Limitations Expressly Declared and Ordained in the Constitution of the United States.

F.

The Fifth Article of amendment to the Constitution of the United States declares and ordains that no person shall be deprived of life, liberty, or property without due process of law, and that private property shall not be taken for public use without just compensation, and the Ninth Article of amendment thereto declares and ordains that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The amendments aforesaid were proposed to the several States and were ratified by them after the Constitution had been ratified by the conventions of the several States, and therefore operate as, and have the lawful force and effect of, a limitation upon, and to that extent a repeal of, the powers created and conferred by the Constitution as originally ratified, including in particular the power to amend the Constitution as declared and ordained by the Fifth Article thereof.

The said articles of amendment also operate as, and have the lawful power and effect of, express guarantees of the faith of the people of the United States, and as such cannot be repealed, modified, or limited in any particular, but stand as perpetual guarantees and safeguards of all rights and liberties of the people of the United States expressly enumerated

in the Constitution aforesaid or expressly or impliedly reserved to the people.

Among the rights and liberties so guaranteed to the people of the United States are all the rights hereinbefore and in paragraph B enumerated, to which the so-called Eighteenth Amendment is repugnant and of which it is violative and destructive, as hereinbefore and in said paragraph B more fully set forth.

By reason of the premises the so-called Eighteenth Amendment is in excess of any lawful power or authority (*ultra vires*) now resident in the people of the United States, or now resident in the peoples of the several States, or now resident in the Senators or members of the House of Representatives of the United States, or the legislatures of the several States, in that it exceeds the power of amendment reserved in the Constitution, and in that it assumes to repeal the irrepealable guarantees of the people of the United States, and is therefore null, void, and of none effect, in law or otherwise, and was not, and is not now, an amendment to, or part of, the Constitution of the United States.

G

The Fourteenth Article of amendment to the Constitution of the United States declares and ordains that no State shall deprive any person of life, liberty or property without due process of law, and thereby operates as a limitation upon the power and authority of the several States and of the peoples and legislators thereof.

The so-called Eighteenth Amendment is repugnant to, and violative of, the right of the people of the United States and of the several States to be heard in their own behalf before an impartial and competent tribunal or court whenever their liberties or rights shall be in question, and therein

assumes to deprive them of their liberty and property without due process of law.

By reason of the premises, the so-called Eighteenth Amendment is in excess of any lawful power or authority (*ultra vires*) resident in the peoples of the several States, or in their legislatures, and the attempted ratification thereof by the legislatures of the several States was and is null, void, and of none effect in law or otherwise, and the so-called Eighteenth Amendment was not, and is not now, an amendment to, or part of, the Constitution of the United States.

H.

The Fourteenth Article of amendment to the Constitution of the United States declares and ordains that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Among the privileges and immunities of citizens of the United States are the rights guaranteed to them and protected by the Fifth Article of amendment to the Constitution and the Ninth Article of amendment to the Constitution, and include all the rights hereinbefore and in paragraph B hereof enumerated, and the so-called Eighteenth Amendment is, as has been herein[1]efore and in paragraph B hereof more fully set forth, repugnant to, and violative of, all the rights aforesaid.

By reason of the premises the so-called Eighteenth Amendment is in excess of any lawful power or authority (*ultra vires*) resident in the peoples of the several States, or in the legislatures thereof, and the attempted ratification thereof by the legislatures of the several States was and is null, void and of none effect, in law or otherwise, and the so-called Eighteenth Amendment was not, and is not now, an amendment to, or part of, the Constitution of the United States.

I.

The Constitution of the United States in the third section of the Sixth Article thereof, requires the Senators and Representatives of the Congress of the United States and the members of the several State legislatures to be bound by oath or affirmation to support the Constitution of the United States, and thereby establishes the ultimate measure and limit of their lawful power and delegated authority.

The so-called Eighteenth Amendment is repugnant to, and subversive of, the sovereign powers of the several States and the natural and inherent rights and liberties of the people thereof, as declared and ordained in, and guaranteed by, the Constitution, and therefore the attempt to propose and ratify it as an amendment to the Constitution was an act, not in support of the Constitution, but in derogation and destruction of it and of the guaranties which it contains.

By reason of the premises the act of the several Senators and members of the House of Representatives of the Congress of the United States and of the several members of the legislatures of the several States in voting to propose the so-called Eighteenth Amendment to the States or to ratify it, was a violation of their oath of office, and in excess of their lawful power and delegated authority, and as such was null, void and of none effect, and the so-called Eighteenth Amendment was never lawfully proposed by the Congress of the United States or lawfully ratified by the legislatures of the several States, and was not, and is not now, an amendment to, or part of, the Constitution of the United States.

J.

The Constitution of the United States in the fourth section of the Fourth Article thereof declares and ordains that

the United States shall guarantee to every State in the Union a republican form of government.

No State possesses a republican form of government in which any part of the people, even the largest majority, possesses absolute or arbitrary power over the lives, liberties, or property of any other part of the people thereof.

No State possesses a republican form of government in which the powers of the legislatures thereof exceed the powers of the people, or in which the legislators possess any powers other than those delegated to them by the people.

No State possesses a republican form of government in which the natural and inherent right of the people as hereinbefore and in paragraph B hereof enumerated may be lawfully injured, impaired or abridged.

The so-called Eighteenth Amendment is in excess of the powers of any part of the peoples of the several States, even the largest majority thereof, and in excess of the powers delegated to the several legislatures thereof, and assumes to impair and abridge all the natural and inherent rights of the peoples of the several States as hereinbefore and in paragraph B hereof enumerated, and as such is repugnant to, and violative of, the principles of a republican form of government, and is therefore in violation of the guarantee of the United States to the several States of a republican form of government.

By reason of the premises the so-called Eighteenth Amendment was not, and is not now, an amendment to, or part of, the Constitution of the United States.

K.

The Tenth Article of amendment to the Constitution of the United States declares and ordains that the powers not delegated to the United States nor prohibited by it to the States, are reserved to the States respectively or to the people.

The amendment aforesaid was proposed to the several States and was ratified by them after the Constitution had been ratified by the conventions of the several States, and therefore operates as, and has the lawful power and effect of, an express guarantee of the faith of the people of the United States to the several States, and as such cannot be repealed or modified or limited without the unanimous consent of each and all of the States of the Union, even as to the consenting States, but stands as a perpetual guarantee and safeguard of all their sovereign powers not previously delegated to the United States or prohibited to the States respectively.

Among the sovereign powers not so delegated or prohibited is the sovereign power of internal government and police within their territorial limits.

The so-called Eighteenth Amendment assumes to delegate to the United States concurrent powers of internal government and police within the territorial jurisdiction of all the States, although their unanimous consent thereto has not been first had and obtained.

By reason of the premises the so-called Eighteenth Amendment is null, void and of none effect, and has not been, and is not now, an amendment to, or part of, the Constitution of the United States.

L.

The Constitution of the United States in Article Five thereof declares and ordains that the Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments thereto. Two-thirds of both houses of Congress, that is to say, two-thirds of the members chosen every second year for the House of Representatives by the people of the several States and two-thirds of the Senators chosen from the several States, have not deemed it necessary to propose, and have not proposed, the so-called Eighteenth Amendment to the several States.

By reason of the premises the so-called Eighteenth Amendment was never lawfully proposed by the Congress of the United States to the several States or lawfully ratified by the legislatures of the several States, and was not, and is not now, an amendment to, or part of, the Constitution of the United States.

Limitations Expressly Declared and Ordained in the State Constitutions.

M.

As will more particularly and at large appear by reference thereto, the peoples of the States of Kentucky and Wyoming in the constitutions of their respective States have declared and ordained that absolute and arbitrary power over the lives, liberty and property of the peoples thereof exists nowhere in their States, not even in the largest majority.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the rights and liberties hereinbefore and in paragraph B hereof enumerated, and as such is an exercise of absolute and arbitrary power over the lives, liberty and property of the peoples of the States aforesaid.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

N.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arizona, Ar-

kansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming, in the constitutions of their respective States, have declared and ordained that no person shall be deprived of life, liberty or property without due process of law.

The so-called Eighteenth Amendment is repugnant to, and violative of, the constitutional limitation aforesaid, in that it denies to the peoples of the several States aforesaid the right to be heard before an impartial and competent tribunal or court in behalf of their liberty to use alcoholic beverages when that liberty is in question, and therein assumes to deprive them of their liberty and property without due process of law.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

O.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arkansas, Delaware, Kentucky, North Dakota, Pennsylvania, Tennessee and Texas, in the constitutions of their respective States, have declared and ordained that the natural and inherent rights of the people are excepted out of the general powers of government and shall forever remain inviolate.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural and inherent rights and liberties hereinbefore and in paragraph B hereof enumerated, and assumes to include them within the general powers of government, and as such is a violation of the rights in the several constitutions of the States aforesaid excepted out of the powers of government and declared to be forever inviolate.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

P.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arizona, Arkansas, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming, in the constitutions of their respective States, have declared and ordained that private property shall not be taken for a public use without just compensation.

The so-called Eighteenth Amendment assumes to take or impair the private property of the peoples of the several States for a public purpose or for the public benefit, in that vast investments of private property lawfully made in the production and distribution of alcoholic beverages, and oftentimes made under their express sanction and license,

will be injured, impaired or utterly destroyed for the alleged benefit of the people without any compensation whatsoever.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

Q.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, in the constitutions of their respective States have declared and ordained that all men are free and independent; that they are endowed with certain inalienable rights; and that among those rights are life, liberty and the pursuit of happiness.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural, inherent, and inalienable rights and liberties hereinbefore and in paragraph B hereof enumerated, and as such assumes to deprive the peoples of the several States aforesaid of the rights and liberties so declared to be inalienable.

By reason of the premises neither the peoples of the States aforesaid nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and

the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

R.

As will more particularly and at large appear by reference thereto, the peoples of the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Utah, Virginia, Washington, and Wyoming, in the constitutions of their respective States have declared and ordained that the enumeration therein of certain rights shall not impair or deny others retained by the people.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural and inherent rights and liberties hereinbefore and in paragraph B hereof enumerated, and as such assumes to deprive the people of the States aforesaid of the rights and liberties so declared in their constitutions aforesaid to have been retained by them.

By reason of the premises neither the peoples of the States aforesaid nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

S.

As will more particularly and at large appear by reference thereto, the peoples of the States of Arizona, California,

Colorado, Georgia, Idaho, Maryland, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Utah, Washington, West Virginia and Wyoming, in the constitutions of their respective States have declared and ordained that the provisions of the Constitution of the United States are the supreme law within their several States.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the guaranties of rights and liberties declared and ordained by the Constitution of the United States aforesaid, as hereinbefore and in paragraphs F to K hereof more particularly and at large set forth.

By reason of the premises neither the peoples of the States aforesaid, nor their several legislators in legislature assembled, had or possessed any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

T.

As will more particularly and at large appear by reference thereto, the peoples of the States of Georgia, Maryland, Vermont, Virginia, and West Virginia, in the constitutions of their respective States have declared and ordained that their representatives in their several legislatures assembled are the trustees and servants of the people and amenable to them.

The so-called Eighteenth Amendment is repugnant to, and violative of, all the natural and inherent rights and liberties of the peoples of the several States aforesaid hereinbefore and in paragraph B hereof enumerated, and as such the act of the several legislatures aforesaid in attempting to ratify it was a betrayal of the rights of the peoples of the said

several States, and a breach of the fiduciary and representative obligations imposed upon them by the several constitutions aforesaid, and as such was in excess of the delegated powers conferred upon them.

By reason of the premises the legislatures of the several States aforesaid did not have or possess any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitutions of the said States contained to the contrary thereof in anywise notwithstanding.

U.

As will more particularly and at large appear by reference thereto, the peoples of the States of Georgia, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Mexico, North Carolina, Texas, Vermont and Washington, in the constitutions of their respective States, have declared and ordained that the people thereof have the inherent, sole and exclusive right of regulating their internal government and the police thereof.

The so-called Eighteenth Amendment assumes to delegate to the United States concurrent powers of internal government and police within the territorial limits of the States aforesaid, and as such is repugnant to, and violative of, the inherent, sole and exclusive right of the peoples of the States aforesaid to regulate the internal government and police thereof.

By reason of the premises the legislatures of the several States aforesaid did not have or possess any authority or lawful power to ratify the so-called Eighteenth Amendment aforesaid, and the attempted ratification thereof by the legislatures of the States aforesaid was and is null, void, and of none effect, in law or otherwise, anything in the constitu-

tions of the said States contained to the contrary thereof in anywise notwithstanding.

V.

As will more particularly and at large appear by reference thereto, the peoples of the States of Arizona, Arkansas, California, Colorado, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, and Washington, in the constitutions of their respective States have reserved to themselves the power within a certain time and at their option to approve or reject at the polls any act of the legislature, and, by reason thereof, until the peoples of the States aforesaid exercise the option so reserved by them, or allow the time reserved therefor to cease and determine, no act of any legislature of the States aforesaid is lawfully complete or operative.

The proclamation and certificate made, issued and published on the 29th day of January, 1919, by Frank L. Polk, as acting Secretary of State of the United States, exercising the powers of that office in the place and stead of Robert Lansing, Secretary of State, who on the day aforesaid was absent from the United States, was made, issued and published before the peoples of the several States aforesaid had exercised their option to reject at the polls the act of their legislatures in ratifying the so-called Eighteenth Amendment and before the time reserved by them for exercising their option had ceased or determined.

By reason of the premises the ratification by the legislatures of the States aforesaid of the so-called Eighteenth Amendment was not, and had not then become, lawfully complete or operative as an act of ratification, and the certificate of proclamation of said Frank L. Polk, acting Secretary of State as aforesaid, was contrary to the law and the fact, and null, void, and of none effect, in law or otherwise.

XI.

Prior to the 28th day of October, 1919, a bill entitled "An act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of high proof spirits for other than beverage purposes and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye and other lawful industries," which had theretofore passed the House of Representatives and the Senate, and which was intended to enforce the so-called Eighteenth Amendment aforesaid, was presented to the President of the United States for his approval, but the President returned it with his objections to that house in which it originated, to wit, the House of Representatives.

XII.

Thereafter, but still prior to the 28th day of October, 1919, the House of Representatives, after having entered the objections of the President at large on their journal, proceeded to reconsider it, but after such reconsideration two-thirds of that house, to wit, two-thirds of the members chosen therefor every second year by the people of the several States, failed to agree to pass the bill, but nevertheless it was sent with the President's objections to the other house, to wit, the Senate, by which it was on the 28th day of October, 1919, reconsidered and approved by two-thirds of that house, to wit, two-thirds of the Senators from each State, elected by the people thereof.

XIII.

In and by the bill aforesaid it is provided that no person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States, that is to say, the

so-called Eighteenth Amendment hereinbefore set forth at large, goes into effect, manufacture, sell, barter, transport, export, deliver, furnish, or possess any intoxicating liquor except as therein authorized, and the said bill contains numerous other intended provisions of law, both civil and criminal, looking to the enforcement of its prohibitions aforesaid.

XIV.

The complainant is advised by counsel and verily believes, and on such information and belief alleges, that the bill aforesaid was not within the lawful power or authority of the Congress of the United States to enact and never became and is not now a law.

XV.

In and by the bill aforesaid, the defendants and each of them were and are charged with the duty of enforcing its provisions within the State of New Jersey and the district of New Jersey, and the defendants A. Mitchell Palmer and Joseph L. Bodine and each of them are charged with the duty of enforcing within the State of New Jersey and the district of New Jersey the civil and criminal law of the United States of America in so far as it is prescribed and regulated by the terms and provisions of the several statutes of the United States of America.

XVI.

The defendants and each of them, except the defendant, the State of New Jersey, threaten and are about to enforce against the complainant and his agents and employees the terms and provisions of the bill aforesaid, to subject the complainant and his agents and employees to criminal prosecution, to seize, confiscate, and destroy certain property of

complainant, including alcoholic liquors now in his possession and belonging to him, to take proceedings to have the premises occupied by complainant in his business as aforesaid declared a common nuisance, to obtain an injunction against said premises and this complainant, restraining and enjoining him from engaging in his said business at said premises and to prevent complainant and his agents and employees from engaging in and pursuing the said business of selling alcoholic and intoxicating liquors at retail at such premises, and in other respects to interfere with complainant and his agents and employees in the transaction of said business, and to wholly prevent complainant, his agents and employees from operating and continuing said business at said premises.

XVII.

There is grave danger that the defendant the State of New Jersey may against its will and by force of arms or otherwise be compelled to aid and assist the defendants A. Mitchell Palmer, Daniel C. Roper and Joseph L. Bodine in the attempted enforcement of the bill aforesaid, and of the so-called Eighteenth Amendment to the Constitution of the United States, all in violation of its sovereign rights guaranteed to it as a sovereign State by the Constitution of the United States.

XVIII.

The enforcement of the bill aforesaid or of the alleged Eighteenth Amendment to the Constitution of the United States aforesaid, and even the mere attempt to enforce either of them, by the defendants or any of them will cause direct and irreparable loss of property and damage to the complainant and to his property rights in that it will prevent

him from continuing his said business, will frighten and terrorize his employees and others so that it will be impossible for him to obtain new employees, will cause him to lose his customers and the profits he could make on sales of his goods, will destroy the good-will of his said business, will depreciate and destroy the value of his property, including the licenses heretofore paid for and obtained by him from the United States and from the State of New Jersey, and otherwise will cause him irreparable loss and damage for which he will have no adequate or sufficient remedy at law or otherwise.

XIX.

The complainant has in his possession a large and valuable stock of merchandise consisting of alcoholic and intoxicating liquors worth several thousand dollars, on which he has paid a stamp tax and other taxes of the United States of America, all of which will be rendered valueless unless the defendants and each of them are at once enjoined as prayed herein.

XX.

Unless the defendants and each of them are restrained from bringing proceedings against the complainant, his agents and employees, to enforce the act of Congress aforesaid and the alleged Eighteenth Amendment to the Constitution of the United States aforesaid, many actions and proceedings will result and will be brought, in all of which actions and proceedings the constitutionality and validity of the said act of Congress of October 29, 1919, and of the said alleged Eighteenth Amendment to the Constitution of the United States must be determined, which issue can and will be most properly and finally decided in this action.

XXI.

The complainant has no adequate or sufficient remedy at law or equity or otherwise in the premises.

To the end, therefore, of avoiding a multiplicity of suits and in order that the complainant may obtain relief in the premises from this honorable Court, where alone adequate relief can be awarded, he prays:

1st. That the State of New Jersey, A. Mitchell Palmer, Attorney General of the United States of America; Joseph L. Bodine, United States attorney in and for the district of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United States of America, and each of them, may be made defendants to this bill of complaint, and in this proceeding, and compelled to answer the bill of complaint herein, but not under oath, an answer under oath being hereby expressly waived, and every material allegation thereof, as fully and to the same extent as if they and each of them were directly and particularly interrogated as to such allegations.

2nd. That a writ of injunction issue out of and under the seal of this Court restraining and enjoining the said defendants, the State of New Jersey, A. Mitchell Palmer, Attorney General of the United States of America; Joseph L. Bodine, United States attorney in and for the district of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United States of America, and each of them, their deputies, assistants, agents, officers, officials, and servants, from in any manner enforcing, or attempting to enforce, or causing, permitting or suffering to be enforced, against the defendant, his agents, servants and employees, or any of them, or against any of his property, directly or indirectly,

any of the terms or provisions of the so-called Eighteenth Amendment to the Constitution of the United States, and of the bill to enforce the provisions thereof hereinbefore referred to, and from arresting or prosecuting the complainant or his agents, servants or employees for or on account of any alleged violation by them or any of them, of the terms or provisions of said so-called Eighteenth Amendment to the Constitution of the United States, or of said bill, or either of them, and from filing any information or causing any indictment to be presented against the complainant, his agents, servants or employees, and from in any manner or to any extent seizing, attempting or causing or suffering or permitting to be seized, or otherwise interfered with, the property, business or affairs of the complainant, and from in any manner interfering with the occupation by complainant, his agents, servants and employees or any of them, of the premises at which the complainant is conducting his said business as aforesaid, or any other place within the State of New Jersey at which the complainant, his agents, servants, and employees, may lawfully be conducting the said business, and from using or attempting to use the name or authority of the United States of America or of the State of New Jersey in any proceedings at law or in equity against the complainant in any court of the United States or any court of the State of New Jersey, or either of them, for or on account of any alleged violation of the provisions of said so-called Eighteenth Amendment to the Constitution of the United States or said bill, or either of them.

3rd. That pending this litigation a temporary writ of injunction, restraining the said defendants, the State of New Jersey, A. Mitchell Palmer, Attorney General of the United States of America; Joseph L. Bodine, United States Attorney in and for the District of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United

States of America, and each of them, their deputies, assistants, agents, officers, officials, and servants, issue as prayed for herein.

4th. That complainant may have such other and further relief as the nature of the case may require and as may be in accordance with equity and good conscience.

5th. That complainant may have not only the writ of injunction conformable to the prayer of this bill, but also that the due process of this Court may issue herein, directed to the said defendants and each of them, directing them and each of them to appear and answer this bill of complaint and to submit themselves to the jurisdiction of this Court, and to do and receive what shall in the premises be just and equitable and to comply in all respects with the orders and directions of this honorable Court in the premises.

EDWARD HOLLANDER,
Solicitor for Complainant,
8 *Bergenline Avenue, Union Hill, New Jersey.*

EVERETT V. ABBOT,
GEORGE W. TUCKER,
BENJAMIN TUSKA,
Of Counsel.

STATE OF NEW JERSEY,
County of Hudson, ss:

William Duhne, being duly sworn, deposes and says that he is the complainant in the above-entitled action in equity; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be al-

leged on information and belief, and that as to those matters he believes it to be true.

WILLIAM DUHNE.

Sworn to before me this 15th day of December, 1919.

OTTO A. GRIESBACH,

[SEAL.] *Notary Public of N. J.*

[Endorsed:] In the Supreme Court of the United States. William Duhne, complainant, against The State of New Jersey, A. Mitchell Palmer, Attorney General of the United States; Joseph L. Bodine, United States attorney in and for the district of New Jersey, and Daniel C. Roper, Commissioner of Internal Revenue of the United States, defendants. Bill of complaint. Edward Hollander, solicitor for complainant, 8 Bergenline Avenue, Union Hill, New Jersey.

5f

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St. Paul, Minn.

Supreme Court of the United States

WILLIAM DUHNE,
Complainant,

against

THE STATE OF NEW JERSEY and others,
Defendants.

BRIEF FOR COMPLAINANT.

EDWARD HOLLANDER,
Solicitor for Defendants.

EVERETT V. ABBOT,
GEORGE W. TUCKER,
BENJAMIN TUSKA,
of Counsel.

Eric W. Whitfield, New York.

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Supreme Court of the United States

WILLIAM DUHNE,
Complainant,

against

THE STATE OF NEW JERSEY and others,
Defendants.

BRIEF ON BEHALF OF COMPLAINANT

on rule requiring defendants to show cause why the bill should not be filed.

On the 16th day of December, 1919, complainant made application for leave to file a bill against the State of New Jersey and the necessary officers of the United States in a suit to procure an adjudication that the so-called "Eighteenth Amendment" to the Constitution of the United States was invalidly adopted and never became an amendment to, or a part of, the Constitution. The bill asked equitable relief against all the defendants restraining them from taking any steps to enforce the amendment or allowing it to be enforced within the territorial limits of the State of New Jersey.

The Court reserved decision on the motion and thereafter made a rule requiring the defendants to show cause on the 5th day of January, 1920, why the bill should not be filed.

Now, upon the return day of the rule, complainant appears in support of it, and submits this brief to show that the Court has jurisdiction of the subject-matter of the action and of the parties defendant, and that on the merits the bill is good.

POINT I.

The bill is not frivolous. On the contrary, it involves the determination of the most important question that can ever come before this Court, to wit: Is our Government constitutional, or is it more absolute and arbitrary than any known in history?

The legislatures of thirty-six states, acting at the instance of the Congress of the United States, have assumed to ratify a supposed amendment to the Constitution which differs from every other amendment which has been hitherto adopted, in that it assumes to regulate the private life of the citizens of the states within the territorial limits of the states themselves.

If the methods which have been pursued in this procedure are constitutional and valid, then it follows that a bare two-thirds of a bare majority of the membership of the two houses in Congress and a bare majority of a bare majority of the membership of three-fourths of the state legislatures can constitutionally adopt any amendment to the Constitution which they may desire. If opposition develops in the houses of Congress or the state legislatures, the number of votes necessary to adopt any

amendment to the Constitution will only need to be increased to a bare two-thirds of the two houses of Congress and a bare majority of three-fourths of the state legislatures as a maximum. In other words, a group of public officials, which at the maximum may be less than 2,800 and at the minimum may be less than 1,400, hold in their hands the Constitution of the United States and the property, the liberty, and even the lives of one hundred and ten millions of people. Their power, if the "Eighteenth Amendment" has been constitutionally adopted, is absolute and arbitrary beyond that of any group of men known to history.

The bill here offered for filing undertakes to present all the possible grounds for denying the existence of any such absolute and arbitrary power. It is believed that the bill is complete in that particular, and that there are no other valid grounds upon which to assail the "Eighteenth Amendment."

Such a bill cannot possibly be frivolous. On the contrary, it presents the greatest issue that was ever brought before this Court for decision. It presents in fact the question: Have we a Constitution, or have we a government more absolute and arbitrary than any known in history?

POINT II.

The Court has jurisdiction of the subject-matter of the suit. The question involved is justiciable and not political.

It may be objected that the question of the validity of the "Eighteenth Amendment," which is the gravamen of this action, is non-justiciable in its nature, being essentially political, and, therefore, not within the range of judicial inquiry.

We do not apprehend that this objection will be seriously urged. The Constitution of the United States declares in Article III, Section 1, Clause 2 that "the judicial power shall extend to *all* cases, in law and equity, arising under this Constitution." Such a mandate brings every case either at law or in equity "arising under this Constitution" within the judicial power of the nation and, *ex vi termini*, makes it justiciable.

Under the allegations of the bill the question is presented whether the various acts of the Congress of the United States and of the legislatures of the several states are within the powers possessed by the peoples of the United States and of the several states, or delegated to their representatives, under the provisions of the Federal Constitution, and whether the resultant of those acts, to wit, the "Eighteenth Amendment," is in fact an amendment to, or a part of, the Federal Constitution. That these questions arise under the Constitution is self-evident. No argument can be adduced to support the position, nor any adduced to controvert it. It may be said, however, that this Court is continually inquiring into the authority of the Congress and of the state legislatures, as defined and limited by the

Constitutions of the United States and of the several states, and the character of the inquiry demanded in the instant cause differs in no particular from those other inquiries which we have just mentioned. If the ordinary question of the constitutionality of a statute is justiciable, then, by the same token, the question of the validity of this amendment, which turns upon precisely the same considerations, is also justiciable.

POINT III.

The State of New Jersey is a necessary party defendant in this action.

In some high respects, this suit is similar to a bill of interpleader.

Complainant has been all his life accustomed to regard the State of New Jersey as the source of the law which he is to obey, as, in other words, the sovereign whose mandates regulate his conduct in his private life. Now the Federal Government claims the authority, at least in part, to issue similar mandates and to regulate his private conduct and establish the rules which he must obey. He is, therefore, confronted with a double claim to his allegiance, and he seeks in this proceeding in equity to have the claim judicially determined by the only court that can determine it. He seeks in this proceeding to ascertain whether the sovereignty to which he has hitherto given his allegiance has been transferred in part from the state of his citizenship to the United States of America, and to determine that question he must have both parties before the Court. His bill, therefore, is in the nature of a

bill of interpleader with respect to the sovereignty to which primarily he owes his allegiance, and the parties to it represent the two claimants to that sovereignty.

If the bill could have been drawn in the form in which it ought to be drawn, the United States of America would have been one party and the State of New Jersey would have been the other. There is no way, however, by which the United States of America may be made a party defendant, and the only method by which complainant can secure a determination of this question of disputed sovereignty is to join as parties defendant the officers of the United States whose duty it is to assert the sovereignty of the United States, and, having joined them, to show that the sovereignty which they are attempting to assert does not exist, and that consequently their efforts to assert it are *ultra vires*, null and void.

No such difficulty confronts him with reference to the State of New Jersey, and consequently the state is made a party defendant *eo nomine*.

In spite, therefore, of the difference in the character of the defendants, the nature of the bill remains the same: it is an effort by complainant as a citizen of the State of New Jersey to have this Court determine for him whether or not, in the particulars covered by the "Eighteenth Amendment," he is under a duty to obey the mandate of the United States of America or under a duty to obey the mandate of the State of New Jersey. To that controversy the State of New Jersey is indeed a necessary party.

POINT IV.

This Court has jurisdiction of all defendants and the State of New Jersey may be sued in this Court as a sovereign entity.

The real question as to the jurisdiction of this Court is presented by the fact that the State of New Jersey is a party defendant. The correctness of complainant's procedure is determined beyond the possibility of a doubt by the following provisions of the Constitution:

> "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish" (Art. III, Sec. 1).
>
> "The judicial power shall extend to *all* cases, in law and equity, arising under this Constitution" (Art. III, Sec. 2, Clause 1).
>
> "In all cases * * * in which a State shall be a party, the Supreme Court shall have original jurisdiction" (Art. III, Sec. 2, Clause 2).

The question presented by the bill now offered for filing arises under the Constitution. It is, therefore, as we have seen, within the judicial power of the United States and of this Court. A state is a party to it and, therefore, this Court has original jurisdiction, and this bill is an application for relief to the original jurisdiction of this Court. Complainant's bill, therefore, is within the letter of the Constitution.

The letter of the Constitution is a constitutional mandate, absolute, definite and imperative. The

question which complainant raises in his bill is within the judicial power of the United States, and the courts of the United States are not at liberty, in any circumstances whatsoever, to decline the jurisdiction which is confided to them by the Constitution.

So far as complainant has been able to ascertain, this is the first time in the history of this Court in which a citizen of a state has made application to it to exert its jurisdiction against the state of which he is a citizen. There has been a considerable discussion of that point in the decisions, but, because the question has never been presented directly, all the discussion of it necessarily has been *obiter*.

The *dicta* have been in direct and irreconcilable conflict. Sometimes it has been said that a state cannot be sued without its consent, and that, consequently, the constitutional mandate is not applicable to such a case. Sometimes it has been said, to the exact contrary, that the constitutional mandate is imperative, and that in a case in which a constitutional question is presented a state may be sued in this Court without its consent.

The leading case in which the negative of the question has been most carefully considered and upheld is that of

Hans v. *Louisiana*, 134 U. S., 1.

The discussion was clearly *obiter*, because the state was sued in the Circuit Court of the United States for the Eastern District of Louisiana, and the Judiciary Act provided that jurisdiction of the circuit courts should be "concurrent with the courts of the several states." Inasmuch as the state

courts of Louisiana did not have power to entertain a suit against their own state, the Circuit Court had no such power. The opinion, however, went beyond the necessities of the situation and declared that, as a general principle, "the suability of a state without its consent" was a thing unknown to the law.

In support of its position the court made the point that if a state may be constitutionally sued in the Federal courts by its own citizens, although it cannot be sued for a like cause by citizens of other states or of a foreign state, "the result is not less startling and unexpected than the original decision of this court that under the language of the Constitution, and original Act of 1789, a state was liable to be sued by a citizen of another state or of a foreign country." We are not aware, however, that an express mandate of the Constitution, imperative, definite, and absolute, may be disregarded because "the result" of it is startling or unexpected.

The court also cites the remarks of various leading statesmen of the country, including our revered Chief Justice Marshall before he went on the bench, to the effect that "it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." We do not understand, however, how the discussions of the Constitution at the time when it was submitted to the states for adoption, or when it was being considered in the Constitutional Convention, can lend any assistance to the attempt to modify the express mandate of the Constitution, definite, absolute and imperative.

The contemporary discussions as to the meaning of the Treaty of Versailles will not, for example, be relevant to the determination of its meaning in subsequent years, if it shall ever be adopted. Otherwise, we should have the absurd result that discussions of its meaning taking place in the English, French and Italian Parliaments, oftentimes in a language unknown to a majority of our people, not communicated even to the authorities of this country charged with the duty of ratifying the instrument, can be subsequently adduced in support of an interpretation which is contrary to the express language of the instrument.

Still again, the court says: "It was argued by the opponents of the Constitution that this clause would authorize jurisdiction to be given to the federal courts of individual suits against the state by citizens of another state or of a foreign state. Adhering to *the mere letter*, it might be so; and so, in fact, the Supreme Court held in *Chisholm* v. *Georgia* [2 Dallas, 419]; but looking at the subject as Hamilton did, and as Mr. Justice Iredell did, in the light of history and experience and the established order of things, the views of the latter were clearly right—as the people of the United States in their sovereign capacity subsequently decided."

The "mere letter" of the Constitution is, however, as we have said before, and cannot reiterate too often, an express mandate of the people of the United States, unambiguous, definite and imperative. By it they have commanded their judges to take jurisdiction of certain enumerated classes of suits, and no one of their judges, no one of their courts, is at liberty to decline that jurisdiction.

These are the insubstantial reasons which have been advanced to support the position that this Court has no jurisdiction of a state without its consent, even in a case arising under the Constitution of the United States. Let us turn to the other view.

In the case of

> *Cunningham* v. *Macon & Brunswick Railroad,* 109 U. S., 446, 451,

this Court said:

> "It may be accepted as a point of departure *unquestioned* that neither a state nor the United States can be sued as defendant in any court in this country without its consent, *except in the limited class of cases in which a state may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution.*"

By far the most elaborate and most comprehensive contribution to the discussion has been made by Chief Justice Marshall in a unanimous opinion of this Court in the case of *Cohens* v. *Virginia,* 6 Wheat., 264. In that case he took a position exactly contrary to that which he had advanced before the Virginia Convention as quoted by this Court in *Hans* v. *Louisiana.* Such a complete reversal of views in a jurist of his weight and authority is a striking tribute to the strength of the argument that the Constitution means what it says. Let us quote some of his language. It was, of course, *dictum,* because the decision in that case was that a writ of error to a state court in which

the United States was a party defendant was not a suit against the United States, but its arguments are unanswerable. After quoting the clause which gives the courts of the Union jurisdiction of all cases in law or equity arising under the Constitution, Chief Justice Marshall says:

> "And this clause extends the jurisdiction of the court to all the cases described without making in its terms any exception whatever and without any regard to the condition of the party. *If there be any exception, it is to be applied against the express words of the article*" (p. 338).

Again he says:

> "Are we at liberty to insert in this general grant, an exception of those cases in which a state may be a party? Will the spirit of the Constitution justify this attempt to control its words? They will not. We think a case arising under the Constitution and laws of the United States, is cognizable in the courts of the Union, *whoever may be the parties to that case*" (pp. 382, 383).

He then points out that

> "if jurisdiction depended entirely on the character of the parties, and was not given where the parties have not an original right to come into court, that part of the 2d Section of the 3d Article, which extends the judicial power to all cases arising under the Constitution and Laws of the United States, will be mere surplusage."

Finally he concludes the discussion in these words:

> "After bestowing on this subject the most attentive consideration, the court can perceive no reason founded on the character of the parties for introducing an exception which the Constitution has not made; and we think that the judicial power, as originally given, extends to all cases arising under the Constitution or a law of the United States, *whoever may be the parties*" (pp. 391, 392).

This discussion of Chief Justice Marshall, be it noted, is the only discussion which grounds itself frankly upon the language of the Constitution and which examines the phrases of the Constitution for the purposes of ascertaining its meaning. It is therefore the only discussion which is truly relevant to the purpose. Its conclusion is inexpugnable. It makes clear the fact that the "mere letter" of the Constitution is also its spirit, and that if the court should depart from the letter it would slay the spirit.

Hitherto in our consideration of this question we have assumed that the State of New Jersey has not given, and will not give, its consent to the maintenance of this suit, and we have assumed that the question whether or not the state can be sued without its consent must be answered in the affirmative in order to sustain the jurisdiction of this Court. This assumption, however, has been made merely for the purpose of argument and has been implicit rather than explicit. We desire, however, to point out that our assumption was unnecessary, that the State of New Jersey has already given an irrevocable consent to be sued in this Court, and that it gave that consent when it ratified the Constitution of the United States. In its act of rati-

fication it consented to the establishment of a judiciary system in which should be vested absolute and complete power to determine all cases arising under the Constitution, and it submitted itself to the jurisdiction of the courts established under those constitutional provisions. In particular, it submitted itself to the jurisdiction of this Court in all cases in which it is a party.

Having once given its consent by ratifying the Constitution, it cannot now withdraw that consent without withdrawing from the Union—which it neither attempts, nor desires, to do. Consequently, its ratification of the Constitution is a continuing assent to the jurisdiction of this Court and is a continuing consent to be sued under the original jurisdiction which has been conferred upon this Court by the Constitution.

In conclusion we may observe that complainant asks that the State of New Jersey be restrained from permitting the "Eighteenth Amendment" to be enforced within its territorial limits; in other words, complainant prays for injunctive relief. It asks this relief against the State, its officers, agents and employees, and therefore asks for nothing which is not properly within the powers of a court of equity. It may be that the state could not be punished *as a state* for an infraction of the injunction, if it were issued; but certainly every officer of the state would be guilty of contempt and could be punished as for a contempt under principles of equity jurisprudence which are too elementary to require the citation of authority.

POINT V.

The bill alleges grounds which are sufficient to establish the lack of authority of those members of the legislative bodies which assumed to propose, and assumed to ratify, the "Eighteenth Amendment," and the consequent invalidity of the "Amendment" itself.

There are a number of constitutive principles of government which are so wrought into the fabric of our institutions that they cannot be validly abrogated even by attempts to amend our Constitutions, whether state or Federal. Complainant's bill sets forth in detail the manner in which those principles are involved in the present crisis, and the manner in which they operate to render the "Eighteenth Amendment" invalid. Those which are relevant are the following:

A. *State Sovereignty.* The states exist as units in a Federal Union. Their sovereign powers can be surrendered by them when the surrender is the explicit and authentic act of their people, but these powers cannot be taken from them without their consent.

B. *Inalienable Rights.* Just as the states possess certain sovereign rights which cannot be taken from them without their consent because they have been reserved, so the people individually, in organizing their states, have reserved certain individual rights which are not surrendered to the community and these also cannot be taken from them without their consent. Among them is the right to use their

natural powers for their present enjoyment so long as they do not thereby cause injury to others, so long, in other words, as they obey the maxim *sic utere tuo ut alienum non laedas.*

C. *Due Process of Law.* Another is the inalienable and reserved right to be heard in their own behalf when their liberties are in question, and to retain their rights and exercise their liberties until it is determined after such a hearing that they are using them to the injury of others.

D. *Just Compensation.* Another inalienable and reserved right is that when the various members of the community are called upon to make a sacrifice for the general good, in so far as the sacrifice of any single member is in excess of that of his neighbors, they shall share his burden to the extent that compensation is possible.

E. *Delegated Powers.* Another constitutive principle in our form of government is that the representatives of the people in their legislative assemblies are subject to all the duties and responsibilities of fiduciaries. They owe to the people the duty of loyalty, and the powers which are delegated to them by the people do not authorize them to destroy or abridge the rights of the people whom they represent.

As we shall see in the sequel, these principles control our Government even when they are not explicitly expressed in our state and Federal Constitutions, but also we shall see that they have been

repeatedly formulated in our state and Federal Constitutions and thus have become the written law of the land. As written and unwritten law alike, they operate as limitations both upon the powers of the people, whether of the Federal Union or of the individual states, and of their delegated representatives. In both their aspects, as written and unwritten law, the "Eighteenth Amendment" is repugnant to them, and is, therefore, beyond the powers of the peoples themselves and of the legislative bodies which have assumed to propose and ratify it.

Before we proceed to a consideration in detail of these principles, some preliminary observations will be of value.

All the principles just defined are definitions of fundamental and admitted rights, and this is by far the most important of the many important aspects of this most important of all constitutional problems.

The *authority* of the American people is only limited by the *rights* of the American people. They may make their government what they please, they may enter upon what enterprises they please, they may make what regulations they please, and the will of the majority shall control—just so far as they do not infringe upon those unquestioned *rights* of the people, even the smallest minority, which it is the object of their government to protect and promote. Consequently, it is only the *rights* of the people which can set limits to the *power* of the people to modify their organic instruments of government. The "Eighteenth Amendment" cannot be shown to be invalid unless it can be shown to be an invasion of the *rights* of the people.

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There has been much and grave misapprehension on this point.

For example, there has been advanced a theory that there is a difference between the subject-matter of constitutions and the subject-matter of legislation, and that a constitution, at any rate the Constitution of the United States, is not amendable so as to include merely legislative matter. It has been suggested that under our system of government legislative matter must pass through the legislative bodies and receive executive consideration, while constitutional matters are to be relieved from executive consideration and are to be passed upon by the people. From that assumption as a premise it is further argued that when the Federal Constitution was framed and provisions looking to its amendment were inserted in it, those provisions were not "intended" to permit the addition to it of purely legislative matter. It is then asserted that the "Eighteenth Amendment" contains matter that is essentially legislative, and thence the final conclusion is drawn that the people have divested themselves of the power to add its matter to the Constitution.

The distinction between the subject-matter of constitutions and the subject-matter of legislation is an artificial refinement which does not easily commend itself as a ground for attacking the invalidity of an instrument which has received the approval of thirty-six legislatures of a great federal union. There is little to indicate that it is such a distinction as to limit the powers of the United States to amend their own Constitution. Granting this essential premise, however, for the sake of argument and solely for the sake of argument, we desire to point out that the views thus set forth

turn upon matters of form and not upon matters of substance. They involve the proposition that the people have limited their powers even in matters of form, and that they have so fettered themselves that they cannot, either by themselves or by their delegated representatives, change the form of their compact of union. Furthermore, they involve the assumption that the powers of amendment which the Federal Constitution contains are limited in a manner which is quite inconsistent with the present customs of the people, who are continually amending their state constitution by provisions which are essentially legislative in the meaning of the word as used in the theory under consideration, but which are put into the Constitution for the express purpose of withdrawing them from cognizance by the legislatures. The theory therefore attributes to the word "amendment," a meaning which is entirely different from that which it possesses at the present time, and involves the hypothesis that the word "amendment" as used when the Federal Constitution was adopted was quite different from the word "amendment" as used at the present time.

Apart from the difficulties of proof, the vice in such a theory is that it presupposes limitations upon the popular powers of self-government of which nobody has ever dreamed. It has been a commonplace of our American constitutional views that the powers of the people stop at the infringement of personal liberties: but that there are other shackles upon the powers of the people, shackles which are independent of the liberties of the individual and which are purely formal in their nature, is obviously impossible of acceptance.

Such a principle would lead to the conclusion, for example, that the peoples of the several states could

not ratify any amendment involving legislative detail, even by the unanimous vote of forty-eight popular conventions adhering strictly to the provisions of Article V, because, forsooth, the matter of it was legislative and not constitutional. Formalism can go no further.

There is another theory which has found acceptance. It is to the effect that the division of powers between the State and Federal Governments is such a vital element in our Federal Union that any effort to change it is revolutionary and, therefore, not within the category of admissible efforts to change the Constitution. This again, is a matter which does not concern fundamental rights. It is a theory which presupposes limitations upon the power of the people which do not spring from the necessary conditions of popular government, but are artificial limits which the people have imposed upon their own powers.

There is nothing, however, which is revolutionary in the mere transfer of sovereign powers, either in whole or in part, from the people of the several states to the people of the United States. On the contrary, it is altogether probable that in subsequent years it may become necessary to clothe the Federal Government with powers which it does not now possess and to divest the states of powers with which they are now vested. The ease and rapidity of communication is so swiftly increasing, and the limitations of distance are being so easily overcome, that the individuality of the states is certain to become less and less important with the lapse of time. In truth, the centralizing process by which special powers are surrendered to the Federal Government is evolutionary rather than revolutionary. To suppose that an amendment to the Constitution

which furthers that process is impossible because it is revolutionary is not only to assume that the people have hampered themselves in matters which are not matters of substance, but is also to misunderstand the true process of evolution.

As we have said before, it is not until we come to the question of ultimate rights that we come to the true bounds of popular power. When the states organized the Union they reserved certain rights to themselves and they cannot be deprived of these rights without their consent, but when they consent, the surrender of these rights is not revolutionary, nor does it exceed the powers of amendment inherent in the covenant of union.

We have discussed these two theories, not out of any spirit of criticism, but because a consideration of them will tend to a strong clarification and confirmation of the grounds upon which the "Eighteenth Amendment" is assailed in complainant's bill. With one exception to be noted later, every valid ground of objection to the amendment is based upon fundamental rights. A decision of this Court supporting the amendment as against the objections urged in the bill is, and must be, and will be, a decision that rights which are admittedly fundamental, which are admittedly the basis of our free institutions, which have been the clearly recognized stepping-stones upon which the people of the United States have risen to their present power, prosperity, and happiness, are non-existent in fact and are subject to any arbitrary or oppressive limitation that may be imposed upon the people in the guise of an amendment to the Constitution of the United States. On the other hand, a decision of this Court sustaining either of the two theories which we have just outlined will be a decision that the funda-

mental rights of the people furnish no limitations upon the powers of amendment, but that there are certain matters of form, and not of substance, which furnish their only protection against confiscatory and oppressive additions to the Constitution.

With this preface, let us proceed to a consideration of the constitutive principles invaded by the "Eighteenth Amendment."

A.

State Sovereignty.

It is an essential characteristic of all co-operative effort that the parties to the compact bring to it whatever obligations are necessary in their opinion to the achievement of the common purpose, and that the agreement of co-operation shall define the contribution which each party makes to it. It is also an essential characteristic of co-operative effort that the parties to it reserve all their rights, possessions and liberties which are not by necessary enumeration contributed to the enterprise, and that, as to those rights, liberties and possessions, they are as free after the compact is concluded as they were before. It is also an essential characteristic of such compacts that they cannot be extended to impair or destroy any of the reserved rights or liberties without the unanimous consent of all the parties to the compact.

These truths are obvious upon reflection, and they apply to the thirteen states that organized the Union and to all the states that subsequently joined it. In each case the mere fact of retaining their independent existence as states involved the maintenance of their powers as states, except in

so far as by the instrument of the Union they were surrendered to the federated unity. It also follows that these rights which were thus reserved by the states cannot be taken from them without their consent. Any provision in the covenant that it could be amended after a certain procedure did not, and could not, mean that the reserved rights could be taken away from any state without its consent.

When a number of men form a corporation and provide that the articles may be amended by a certain vote, the amendments which are possible under such a provision are limited to matters which do not affect the rights or properties of the stockholders outside of the corporate assets, and do not extend to the proportionate interests of the stockholders in the assets of the corporation. Nothing less than a unanimous consent of all the stockholders in the corporation can operate to reduce their property interests in it. So long as one stockholder, owning one share of stock, holds out, his interest in a corporation cannot be diminished by the vote of all the other stockholders, and if *his* interest is not diminished, the interests of the other stockholders, even of those who have consented to the vote, are not diminished.

Similarly, in regard to the states, an amendment which pares down the reserved rights of the states and transfers a part of their rights to the Federal Government is ineffective as to any dissenting state; and being ineffective as to any dissenting state is ineffective as to all the rest of them. If Rhode Island had been the only state to refuse to ratify the "Eighteenth Amendment," the result would have been, not merely that its reserved sovereign powers would have remained unimpaired by the ratification of the other forty-seven states,

but that the ratification would have been ineffective as to the other forty-seven as well.

It might be possible for an individual state to surrender to the Federal Government its powers of internal government and police, and that after such a surrender the Federal Government could legislate as effectively within the territorial limits of the state in regard to the surrendered sovereignty as it can now legislate with regard to the territories which are still in its possession; but, nevertheless, on an amendment properly submitted to the states which calls for a general surrender of the powers of internal government and police, the consent of forty-seven of the states to that amendment is not sufficient to give it validity, and it cannot become valid even as to the forty-seven states until the forty-eighth state shall have also given its consent.

The bill alleges that this principle of reserved rights operates to prevent the "Eighteenth Amendment" from taking effect as an amendment to the Constitution of the United States, and the allegation is irrebuttable, because Rhode Island, Connecticut and New Jersey having failed to ratify, their sovereign rights have not been taken away from them and now exist as unimpaired as they were before the resolution was proposed in Congress. Not only are the sovereign rights of these states unimpaired, but the "amendment" has not taken away the sovereign rights of other states which have apparently consented to it. The "amendment" is, therefore, a nullity. It does not confer upon the Federal Government concurrent power to regulate the internal government or police of any state in the Union, and the Constitution is not amended in that particular.

Bill, Section X, paragraph A.

Not only is this true by reason of the essential nature of the Federal Republic, but it is also true by reason of the guaranties contained in the covenant of union of the United States.

After the Constitution was adopted, it was amended by a vote of the states, and among the amendments thus adopted was one which was intended to obviate the possibility of a misunderstanding on this essential subject. The Tenth Amendment expressly declared that the rights not surrendered to the Federal Government or prohibited to the states were reserved to the states. That was more than an amendment to the Constitution. It was a guaranty. It was a contract between the states and the Federal Government. It also operated as a limitation upon, and, therefore, a repeal of, any powers which the original instrument might have contained which were inconsistent with it. If, in other words, the original instrument contained a power by which the Federal Government could absorb the sovereign rights of the states by a vote of three-fourths of them, that power was taken away from them by the Tenth Amendment and ceased to exist, and does not exist at the present time. Whatever rights may be contained in the amendment clause of the Constitution are taken away to the extent of the rights reserved to the states by the Tenth Amendment.

Bill, Section X, paragraph K.

Not only are the sovereign rights of the states inherently inalienable and indstructible, and not only are they guaranteed by the Tenth Amendment to the Constitution of the United States, but in many of the states they have been removed from

the province of the legislature. In these states they cannot be surrendered to the Federal Government, save by the act of the people themselves. Consequently the legislative act of ratification in those states was *ultra vires*, null and void.

Bill, Section X, paragraph U.

B.

Inalienable Rights.

Every constitution in our American republic asserts either that the people have certain inalienable rights or that an enumeration of certain rights in the Constitution does not operate to diminish or impair other rights which are reserved to the people. That principle of inalienable and reserved rights is the inexpugnable law of the land. There is no power resident anywhere in the Union which can take away those inalienable rights. The only question is, what rights are inalienable?

The answer to that question is simple. It is found in the Latin maxim, which is a commonplace of our jurisprudence, *sic utere tuo ut alienum non laedas*—do not so use your property as to injure your neighbor. Subject to that limitation, every American may use his natural liberty in the enjoyment of his property and in the pursuit of his happiness, and there is no authority in the country which can lawfully deprive him of that liberty. It is an inherent right. It rises superior to constitutions and statutes and will be protected by the courts. This was explicitly declared by this Court in the case of

Loan Association v. *Topeka*, 20 Wall., 655,

in which it was held that a state statute was void, even in the absence of constitutional provisions limiting the powers of the legislature, upon the simple ground that it invaded inherent rights of the people. The statute in that particular case levied a tax on the people for the support of a private enterprise. As the Court put it at page 662, "the law authorizing it was beyond the legislative power, and so was an unauthorized invasion of private right." The Court then went on to say:

> "It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.
>
> "The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.
>
> "There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are

> respected by all governments entitled to the name. No Court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but henceforth be the property of B."

It is not necessary to burden the Court upon any branch of the law of this case with unnecessary citations. The complainant's position rests upon principles which are too obvious to admit of dispute, and one expression of views by this Court, such as we have just quoted, is amply sufficient for our purpose. When all the constitutions in the country and the considered opinion of this Court unite in the expression of a given view, further authority seems superfluous.

The inalienable rights of the people of the United States are invaded by the "Eighteenth Amendment," because it not only prohibits the use of alcohol in circumstances in which injury to the community will necessarily ensue, but also in circumstances from which injury cannot possibly result. That a moderate and sober use of alcoholic beverages, without injury to the community, is possible —and common—is indisputable. It is within the experience of every man, and yet an intolerable "amendment" assumes to take away that right.

The right to the protection of our fundamental rights springs not only from the fact that they are inherent,

Bill, Section X, paragraph B.

and will be protected by the courts,

Loan Association v. *Topeka,* 20 Wall., 655,

but also by the fact that they are guaranteed by all our constitutions, state and national.

The Ninth Amendment to the Federal Constitution reserves them.

Bill, Section X, paragraph F.

The Fourteenth Amendment guarantees the privileges and immunities of the citizens of the United States, and among those immunities is that granted by the Ninth Amendment with respect to reserved rights.

Bill, Section X, paragraph H.

These reserved rights are the condition precedent of a republican form of government. If any part of the citizens, minority or majority, can take away the rights of the other part, majority or minority, the government is not republican. The Constitution of the United States (Art. IV, Sec. 4) guarantees a republican form of government to the states, and this Court, as one of the three coordinate branches of the government of the United States, is charged, like the others, with the duty to see that the guaranty is fulfilled. The "Eighteenth Amendment" is in violation of the covenant and is, therefore, void.

Bill, Section X, paragraph J.

The reserved rights of the citizens are in many state constitutions declared to be not subject to any arbitrary or absolute power, they are excepted

out of the powers of government, they are inalienable, they are declared to be not impaired by the enumeration of other rights, and they are held to be brought within the protection of the Constitution of the United States,

Bill, Section X, paragraphs M, N, Q, R and S,

and in those states, the legislatures have no authority to impair or abridge them, even by ratifying proposed amendments to the Constitution.

To sum it all up, there is no lawful authority anywhere in this Union or in any of its parts to forbid a citizen of the United States to indulge in the moderate and sober use of alcoholic beverages, when no injury results therefrom to others —and that means that *some* use of alcoholic beverages is permitted to *every* man, and that *all* use cannot be prohibited to *any* man.

C.

Due Process of Law.

Another fundamental principle at the base of our governmental system is that before any man can be deprived of his liberties upon any ground whatsoever, he shall be entitled to be heard in his own behalf. This right is defined by the phrase "due process of law," and that phrase means that it is the process of the law to which every man is entitled when his rights are assailed or questioned. There must be a charge against him. He must be notified of the charge. He must have an opportunity to present arguments in his own behalf, and if

questions of fact arise, to adduce evidence relevant to the issue, and to have all this take place before a tribunal which is vested with appropriate jurisdiction to determine the question.

This tribunal need not be a court in the technical sense of the word, but it must be a tribunal which exercises judicial functions, which determines the issue upon evidence and argument, and which must have the power to ascertain all the facts necessary to a determination. A board of tax assessors is a tribunal in that sense of the word. Public Service Commissions are tribunals in that sense of the term. The Draft Boards were tribunals in that sense of the term. In all these cases, a man whose rights are at stake is entitled to notice, to his hearing, and to an opportunity to produce any and all facts relevant to the issue, in a word, to his day in court.

For years there has been a vigorous assault upon the use of beverages containing alcohol. There have been countless charges made of its iniquity and of its injurious effect upon the community, and as a result there have been numerous statutes enacted in the various states of the Union, and now the "Eighteenth Amendment" has been adopted, prohibiting the use of it altogether. Nevertheless in spite of that attack, which has been continued for so long, no man whose rights or liberties have been thus brought in question, whether he be manufacturer, dealer, or user, of alcoholic beverages, has ever had his day in court to meet the charge that the community suffers damage at his hands. There has never been a case in court in which such charges have been alleged by pleadings, in which those concerned have had an opportunity to deny them by pleadings, in which there has been any evidence adduced to prove or disprove the charges, or in which

there has been an unbiased or competent tribunal to hear and determine the issue. The states have legislated on the subject without practical let or hindrance, and the industry has been alternately petted and choked, fostered and prohibited, with a disregard of the first considerations of the constitutional right to the day in court which is almost without parallel.

Not only has this happened, but, except in one case (*People* v. *Wynehamer*, 13 N. Y., 378), the right of those who are concerned to be heard in a court before their liberty or property is taken away seems never to have been demanded. We are not particularly concerned with the cases in the state courts, but we are concerned to point out that in this Court the question which we are now presenting as to the right of those who use or deal in beverages containing alcohol to their day in court on the question of their injuring the community of which they are members before their liberty or property can be taken away, is a new question, undiscussed, and of absolutely first impression.

The first case before this Court which involved the question of the due process of law and prohibition was

Bartemeyer v. *Iowa*, 18 Wall., 129.

An Iowa statute prohibited the traffic in alcoholic liquors within the state. The statute was assailed as unconstitutional as being in violation of the due process clause of the Fourteenth Amendment. The case was submitted on briefs, but the Court declined to pass upon that issue of the constitutionality of the act, because it was satisfied "that a moot case was deliberately made up to raise the particular

point when the real facts in the case would not have done so."

The issue might have been presented in the later case of

Beer Co. v. *Massachusetts*, 95 U. S., 25,

which grew out of a prohibitory law of Massachusetts. Counsel for the Beer Company, however, which was operating under an ancient charter, based their contention upon Article I, Section 10, Clause 1 of the Constitution, which forbids the states to pass any law impairing the obligation of contracts, and declined to avail themselves of the due process clause of the Fourteenth Amendment. The language of their brief is that "the company does not invoke the aid of the Fourteenth Amendment to the Constitution, but submits that the statute * * * impairs the obligation of the contract contained in the charter."

This Court, although the Fourteenth Amendment was not invoked by the defendant, concluded its opinion in this language:

> "Since we have already held in the case of *Bartemeyer* v. *Iowa* as a measure of police regulation looking to the preservation of public morals, a state law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States, we see nothing in the present case that can afford any sufficient ground for disturbing the decision of the Supreme Court of Massachusetts."

As we have seen, however, in the *Bartemeyer* case the Court declined to discuss the question whether

prohibition was repugnant to the Fourteenth Amendment, and consequently its statement in the *Beer Company* case is erroneous.

The third case to come before this Court involving prohibition and due process of law was

Mugler v. *Kansas*, 123 U. S., 623,

which grew out of a Kansas prohibitory statute. *All the counsel in that case, however, began their argument by conceding that prohibition within the state was constitutional.* Senator Vest, of counsel for one of the defendants, admitted that "the state has unquestionably the power to prohibit the manufacture, for sale or barter, of intoxicating liquor within its limits" and Mr. Joseph H. Choate began his argument with the concession that the Legislature of Kansas was the "sole judge of how far they should go in forming the morals and habits, and regulating the appetites and prescribing the food and drink of the people of Kansas."

Although counsel thus refused to discuss the question of the constitutionality of prohibition within the state, they did advance an argument which turned ultimately upon the due process clause. It may be summarized as follows:

> "We concede that the state under its police power can constitutionally prohibit the manufacture of alcoholic beverages for barter or sale to its own citizens, but nevertheless it cannot prohibit the manufacture of alcoholic beverages for barter or sale to persons outside of the state, because those persons are beyond its police power and not subject to its jurisdiction, and as to them the

state does not possess the regulatory powers which it possesses over its own citizens.

Consequently in prohibiting the manufacture of alcoholic beverages for sale without the state the legislature exceeded its powers and therefore deprived the defendants of their liberty and property without the due process of law guaranteed to them by the Fourteenth Amendment."

The Court answered this argument in the following language:

> "A portion of the argument on behalf of the defendants is to the effect that the statutes of Kansas forbid the manufacture of intoxicating liquors to be exported or to be carried to other states, and upon that ground are repugnant to the clause of the Constitution of the United States *giving Congress power to regulate commerce with foreign nations and among the several states.* We need only say, upon this point, that there is no intimation in the record that the beer which the respective defendants manufactured was intended to be carried out of the state or to foreign countries. And, without expressing an opinion as to whether such facts would have constituted a good defense, it is observed that it will be time enough to decide a case of that character when it shall come before us."

We have examined the original record of this case in the library of the Bar Association of the City of New York. It is deficient in some particulars. For example, it does not contain the brief of Mr. Choate. So far as we have been able to ascertain, however, the record nowhere mentions the commerce clause of the Constitution. It was not mentioned in the assignment of errors, and it is not

mentioned in the report of the case by the official reporter. We do not understand, therefore, how this Court could have supposed that the argument was based upon the commerce clause in the body of the Constitution when it was in truth based upon the due process clause in the Fourteenth Amendment.

Although counsel for the defendants refused to discuss the question of the constitutionality of the prohibitory statute within the jurisdiction of the states, the Court discussed it in its opinion at considerable length. Thus it appears that the Court discussed a question which counsel *did not* argue, and, upon an erroneous statement of the condition of the record, declined to decide a question which counsel *did* argue.

A court is always at a disadvantage when it discusses any question without the aid of argument by counsel, and the results are apt to appear in its opinion. This is true of the discussion of the Court in the *Mugler* case. Twice this Court declared that the Fourteenth Amendment was superior to the police power of the states, and twice declared that the police power of the states was superior to the Fourteenth Amendment.

On the point of the superiority of the police power to constitutional prohibitions it says:

> "In *Beer Company* v. *Massachusetts*, 97 U. S. 25, 33, it was said that, 'as a measure of police regulation, looking to the preservation of public morals, a state law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of the Constitution of the United States.' Finally, in *Foster* v. *Kansas*, 112 U. S. 201, 206, the court said that the question of the

constitutional power of a State to prohibit the manufacture and sale of intoxicating liquors was no longer an open one in this court" (p. 659):

Again it says:

"No one may rightfully do that which the lawmaking power, upon reasonable grounds, declares to be prejudicial to the general welfare.

"This conclusion is unavoidable, unless the Fourteenth Amendment of the Constitution takes from the States of the Union those powers of police that were reserved at the time the original Constitution was adopted. But this court has declared, upon full consideration, in *Barbier* v. *Connelly*, 113 U. S. 27, 31, that the Fourteenth Amendment had no such effect. After observing, among other things, that that amendment forbade the arbitrary deprivation of life or liberty, and the arbitrary spoliation of property, and secured equal protection to all under like circumstances in respect as well to their personal and civil rights as to their acquisition and enjoyment of property, the court said: 'But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity'" (p. 663).

On the other hand, the Court twice declares that in such matters the Constitution is supreme. It says:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon an inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to these objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution" (p. 661).

And again:

> "Undoubtedly the State, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument or interfere with the execution of the powers confided to the general government" (p. 663).

There is another branch of the *Mugler* case which also requires consideration. The statute there under consideration provided that "all places where intoxicating liquors are manufactured * * * are hereby declared to be common nuisances."

A nuisance is defined to be "anything that unlawfully worketh hart, inconvenience, or damage. 3 *Blackstone's Commentaries*, 5, 216."

> *Bouvier's Law Dictionary, sub voc.* Nuisance.

The question therefore arose in the *Mugler* case whether a place where intoxicating liquor was manufactured was a place which worked hurt, inconvenience or damage, and whether a declaration by the legislature that a brewery was such a place was repugnant to the due process clause of the Fourteenth Amendment. Counsel advanced the obvious argument that that declaration of the statute deprived them of their day in court upon the question of whether it worked hurt, inconvenience or damage, and in support of their argument they pointed out that the inquiry which the statute permitted related only to the question whether the given place was a brewery, and that they were foreclosed of their right to prove that it worked no hurt, inconvenience or damage.

The Court answered the contention of counsel in this language:

> "Nor is the Court required to adjudge any place to be a common nuisance simply because it is charged by the state to be such. It must first find it to be of that character; that is, must ascertain, in some legal mode, whether since the statute was passed the place in question has been, or is being, so used, as to make it a common nuisance."

Again the Court was in serious error. It declared that the statute permitted the inquiry which takes place in every case in which there is a charge of maintaining a public nuisance, whereas the fact was that the statute foreclosed it absolutely.

The *Mugler* case may be summed up as follows:

1st: Counsel conceded that prohibition was not *per se* repugnant to the due process clause of the Fourteenth Amendment.

2nd: The Court discussed that question without the aid of counsel and reached the conclusion which counsel conceded.

3rd: The Court in its discussion took two inconsistent positions: one that the police power of the states was superior to the Fourteenth Amendment, and one that the Fourteenth Amendment was superior to the police power of the states.

4th: The Court misapprehended the mandate of the due process clause and omitted to observe that it guaranteed a judicial procedure which the statute in the case before it denied.

5th: The Court declined to pass upon the first issue raised by counsel for the defendants upon the erroneous statement that it was based upon the commerce clause in the body of the Constitution when it was in fact based upon the due process clause of the Fourteenth Amendment.

6th: The Court overruled the contention of counsel that they had had their day in court on the question of nuisance upon the erroneous statement that the statute permitted a judicial inquiry into a fact which the statute distinctly forbade.

The next case in this Court was

Kidd v. *Pearson*, 128 U. S., 1.

Like the *Mugler* case, it involved the question of prohibition within the state and also the prohibition of manufacture for export without the state. On the question of prohibition within the state the Court held itself bound by the decision in the *Mugler* case. On the question of manufacture for export, the Court held that the statute was not repugnant to the commerce clause in the Constitution, because that clause begins to take effect only when transportation begins, and does not operate during manufacture prior to transportation. Neither counsel nor court considered the question whether prohibition denied the day in court on the issue of injury to the community.

The next case,

Crowley v. *Christensen*, 137 U. S., 86,

was colorless. It contains no reference by either court or counsel to prior decisions and does not discuss the right to a day in court.

Another case which came to this Court was

Purity Extract Co. v. *Lynch*, 226 U. S., 192.

The Mississippi legislature enacted a statute which prohibited the sale of "vinous, alcoholic, malt, intoxicating or spirituous liquors or intoxicating bitters or other drinks, which, if drunk to excess, will produce intoxication."

The question was whether the statute forbade the sale of a beverage known as "Poinsetta." The case came up on an agreed statement of fact. An exam-

ination of the record shows that the facts were stipulated. Among them were these:

> "Poinsetta contains no alcohol.
>
> "Poinsetta is guaranteed under the Pure Food Laws of Congress and no matter to what extent taken will not produce intoxication.
>
> "It has a distinctive odor dissimilar from any intoxicating drink and *cannot be employed as a subterfuge for the sale of beer* because it is bottled in a distinctive way and its name blown in each bottle which contains the beverage."

The Mississippi court held, first, that the sale of Poinsetta was forbidden by the statute whether it was intoxicating or not, because it was made of malt, and, second, that its sale could be constitutionally prohibited, because the police power of the state was "broad enough to make its prohibitory laws effective and include in its provisions frauds, disguises, *subterfuges*, attempted evasions for beverages easily used as subterfuges and known to be the handmaidens of intoxicating beverages."

In other words, the Court decided that the sale of Poinsetta could be constitutionally prohibited because Poinsetta was a subterfuge when the record before it expressly stipulated that Poinsetta was not a subterfuge.

It is clear that the Mississippi court was saved from the guilt of a deliberate falsehood only by the circumstance that it made no categorical affirmation. It did not in terms assert that Poinsetta was a subterfuge for intoxicating liquors, but it assumed that fact as the implied premise of its conclusion. Its moral guilt is just as great, therefore, as if it perpetrated a deliberate falsehood, be-

cause it deliberately grounded its decision upon premises which it know to be false.

When the case came here, this Court held itself bound, as to the interpretation of the statute, by the decision of the Supreme Court of Mississippi, and counsel for the *Purity Extract Company* apparently made no attempt to bring to the attention of this Court the gross impropriety, to use moderate language, of the decision below. Upon the record thus inadequately presented to it, this Court affirmed the decision of the lower court upon this ground:

> "The statute established its own category [i. e. of prohibited beverages]. The question in this court is whether the legislature had power to establish it. The existence of this power (as the authorities we have abundantly cited demonstrate) is not to be denied because some innocent articles or transactions may be found within the prescribed class. The inquiry must be whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat."

In other words, this Court held that it was not an arbitrary fiat of the state legislature to prohibit the manufacture of Poinsetta upon the ground that it was a subterfuge when the agreed fact was that it was not, and could not be, a subterfuge. If that was not irrational, when *is* a statute irrational?

The question whether the statute deprived the *Purity Extract Company* of its day in court on the question whether it was doing anything to the detriment of the community was not raised and was not discussed.

The latest case to come before this Court involving a prohibitory statute is:

Hamilton v. *Kentucky Distilleries & Warehouse Co.*,

decided December 15, 1919, and not yet reported.

In that case the statute was the National Prohibition Act. It was assailed as being repugnant to the Fifth Amendment to the Constitution. The main ground of the attack was that the property of the complainants in that case was taken without just compensation. The due process clause was not discussed, either by the Court or by counsel.

At least twice this Court has said that the question of the constitutionality of prohibition under the due process clause is not open to the Court: *Foster* v. *Kansas*, 112 U. S., 201, 206 ("no longer open in this Court"); *Clark Distilling Co.* v. *Western Maryland Railway Company*, 242 U. S., 311, 320 ("not open to controversy"). Our examination of the cases, however, has disclosed the remarkable fact that the right of the citizen to his day in court before his liberty to manufacture, sell or use alcoholic beverages can be taken from him, has never been suggested by counsel or discussed in any of the opinions delivered by this Court. It is presented here and now for the first time in the entire history of prohibitory legislation in the Federal courts, and it presents a case of first impression.

The demand that life, liberty or property shall not be taken without due process of law involves the procedure of the law, and not its substance, except in so far as the substance is involved in the procedure. The procedure which is guaranteed by the Constitution is the procedure of the courts, and

the Constitution consequently takes from the legislature the power of determining questions as to which there is a dispute and as to which a citizen may desire to defend his rights. In other words, the due process clause is but an extension of the distinction between the legislative and the judicial powers. The legislature cannot be the arbiter of disputed facts, and when the facts are disputed, the Constitution guarantees that the parties to the dispute may have the arbitrament of the courts.

If, for example, there is a dispute as to whether the use of alcoholic beverages is injurious to the community, the Court and not the legislature must determine it. If there is a dispute as to whether a given content of alcohol is necessary to make a beverage intoxicating, the Court and not the legislature must determine it. The reason is that in the first place the question is judicial in its nature and not legislative, and, in the second place, that a judicial determination is guaranteed by the Constitution.

The views of this Court upon this question are well expressed in the following quotation from the *Mugler* case, which is a fair statement of the accepted doctrine of the Court:

> "The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon an inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to these objects, or is a palpable in-

> vasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.
>
> "Keeping in view these principles, as governing the relations of the judicial and legislative departments of the Government to each other, it is difficult to perceive any ground for the judiciary to declare that the prohibition by Kansas of the manufacture or sale, within her limits, of intoxicating liquors for general use there as a beverage, is not fairly adapted to the end of protecting the community against the evils which result from the extensive use of ardent spirits."

They are similarly stated in the *Purity Extract* case in this language:

> "The inquiry must be whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat."

This view denies the right to a judicial investigation which is guaranteed by the Constitution. It makes the question of due process turn, not upon the grant or denial of a judicial investigation, but upon the question whether the legislature in enacting its law has acted arbitrarily or irrationally.

We submit, with deference, that this view involves a radical misconception of the effect of the due process clause.

We submit that the occasion can never arise upon which the judicial branch of the Government may inquire whether the legislative branch of the Government has legislated in a manner which is either arbitrary or irrational.

We submit that the only inquiry upon which the judicial branch of the Government can possibly enter with respect to legislative action under a due process clause is to inquire whether the day in court has been established as the condition precedent to the impairment of individual liberty.

We submit that before complainant can be deprived of his liberty to sell beverages containing alcohol, he must, under his right to due process of law, first be afforded his day in court on the charge that his business "worketh hurt, inconvenience or damage," and that his liberty to sell such beverages cannot be taken from him unless and until that charge has been proved by competent evidence.

We submit that no court has authority to prejudge that issue, either upon a theory of judicial notice or of judicial presumptions, but that the burden of proof is on him who brings the charge.

Finally, we submit that in taking these positions we are standing upon "the letter of the law," and that in this instance "the letter of the law" is also its spirit and is the very soul of American civilization. When any American court shall permit the liberties of any American citizen to be impaired or abridged without his day in court, the decline of American institutions will have begun—not to stop until the decision is reversed or overruled.

Now let us see how the due process of law has been guaranteed to complainant.

It has been guaranteed to him by the inherent nature of our republican institutions.

Bill, Section X, paragraph B.

It has been guaranteed to him by the Fifth Amendment to the Constitution of the United States which limits the powers of the Federal Government.

Bill, Section X, paragraph F.

It has been guaranteed to him by the Fourteenth Amendment which limits the powers of the states.

Bill, Section X, paragraph G.

In other words, neither state nor nation can take liberty or property without due process of law, even by constitutional amendment.

It is guaranteed to him by Article IV, Section 4, because that is not a republican form of government, which begins by abolishing in any particular the right to a due process of law in the impairment of right.

Bill, Section X, paragraph J.

It has been guaranteed to him in all the state constitutions.

Bill, Section X, paragraphs M, N, O, Q, R, S and T.

These guaranties leave no room for doubt. If it is charged that a man's use of alcoholic beverages "wortheth hurt, inconvenience or damage," that charge must be proved in court, and there exists no lawful authority in this country which can punish him for it without that proof, constitutional "amendments" to the contrary notwithstanding.

D.

Just Compensation.

While the liberties of the people are constitutionally defended, it is also true that the community may at all times call upon its members for any sacrifice that may be necessary to the common safety. Life itself yields to that need.

The call cannot be denied, even though only one individual out of the whole community may be required to make the sacrifice. If the necessity exists, the sacrifice must be made. The question of its existence is, of course, judicial, to be determined by evidence, and the citizen is entitled to have the necessity proved. His property cannot be taken, for example, to make way for a public improvement without proof that it is for a public use; but if the public use is proved in court, the taking cannot be resisted.

There is one inherent equity, however, which attends a taking in such circumstances; and the equity is this: If any citizen is called upon to make a sacrifice which is in excess of that of his neighbors, the community as a whole must bear its share of the burden and distribute it, so far as possible, among all the citizens. That leads to the doctrine of compensation for the taking of private property. If it be land, the property must be paid for, and the cost of it must be collected by taxation from the rest of the community; if it be services, the services must be paid for, and their cost similarly collected from the rest of the community. Even in the high exigency of warfare for the protection of the very life of the nation, those who are called upon

to defend the nation are to be compensated so far as compensation is possible.

This principle is another of those self-evident and foundation principles which underlie the structure of our Government. There has been, however, a certain misapprehension as to its extent which has made its appearance in our judicial decisions. It is sometimes supposed that when property is taken or destroyed under the so-called "police power of the states" compensation is not necessary. As a rule of constitutional law, so far as it is a rule, this conception seems to have taken its origin in the case of

Sparhawk v. *Respublica*, 1 Dall., 357,

decided in 1788. It appeared in that case that during the Revolution the Colonial Government seized the plaintiff's property and carried it away to a place of supposed safety in order to prevent the British troops from getting it. The effort was unsuccessful, however—the property was eventually seized by the British where it was deposited, and the question arose whether the plaintiff could get compensation for it. The Court decided against him, citing many cases in support of its judgment. That decision and its citations are, it is believed, the historical origin of the constitutional view which we have just outlined.

The authorities on which the Court in the *Sparhawk* case relied are all cases of trespass decided in England in which the question was whether the defendant was a trespasser for destroying or injuring plaintiff's property in the effort to save himself from imminent danger. To hold that he was a trespasser would have been to deny the right to self-

preservation, but this the English courts, with their characteristic sense of justice, declined to do. To decide otherwise would have been to hold that when a man is pursued by assassins he has no lawful right to flee across another man's land without first getting his consent.

The further question, however, whether a defendant who damages plaintiff's property in the effort to save his own life should compensate the plaintiff for any injury which he may have done was apparently not brought to the attention of the courts. Recently, however, it has arisen and been decided in the Supreme Court of Minnesota. It was there held, citing

Ploof v. *Putnam*, 81 Vermont, 471,

that while the defendant had a right to tie up his boat, even against the plaintiff's protest, to the plaintiff's wharf, in order to escape the dangers of a storm, nevertheless he was liable to the plaintiff for any damage that might be caused to the wharf by the boat while the storm was in progress.

Vincent v. *Lake Erie Nav. Co.*, 124 N. W. Rep. (Minn.), 221.

This is an obviously just conclusion, and the advance which it signalizes in our legal concepts should be closely followed in our constitutional decisions. The state should be allowed the right, and even the duty, to take any property which is necessary to the safety of the state, even if the taking be in the form of mere destruction for the purposes of self-preservation; but, nevertheless, the citizen whose property is taken, if his property has been lawfully acquired, should not be compelled to

bear the whole burden of the loss, but the loss should be distributed throughout the community. In other words, the community should compensate him.

In the case at bar complainant acquired his property lawfully and with the permission and license of the State and Federal Governments. The "Eighteenth Amendment" now undertakes to deprive him of it, and this measure of deprivation is defended as being for the benefit of the community. We have been unable to formulate a single plausible argument in support of the position that he is not entitled to compensation for the taking, except the general current of judicial legislation. On the other hand, there are two principles of constitutional law which entitle him to compensation.

The first principle is embodied in the phrase, "Private property shall not be taken for public use without just compensation." It may be urged that the "taking" under that constitutional phrase does not include destruction without subsequent use, but the argument is not persuasive. Destruction begins with a taking, and after the taking the object is destroyed for the public benefit, *i. e.*, the public use. If, however, the compensation clause is insufficient, the due process clause comes to its support: "No person shall be deprived of life, liberty or property without due process of law."

As we have seen, the process of the law is the process of the courts, and that condition precedent must be observed before any taking whatever can take place. But the process of the courts involves more than the mere day in court. It involves the substance of the law to this extent, that before the property can be taken there must be a just ground for the taking. Otherwise of what use is the day in court? If a man has his day in court, only to

find, after being heard in his own behalf, that his life, liberty or property may be taken without a just cause, or without any cause, by legislative authority, of what use is his day in court? In other words, the day in court must result in the disclosure of a just cause for the taking, or it is not a day in court. In that aspect of the case the destruction of property without compensation is a taking without due process of law.

This precise point was adjudged in the case of

Wynchamer v. *People*, 13 N. Y., 378,

a case which has been frequently cited to this Court, but which, so far as we can learn, this Court has never cited but once. The opinion of Judge Comstock in that case is not surpassed among the judicial opinions of this country, for weight of reasoning or for wealth of learning, and we ask the Court's careful attention to it as a complete and adequate decision in favor of complainant.

With this discussion we are now ready to discuss the application of the principle of just compensation to the "Eighteenth Amendment."

Just compensation is guaranteed to complainant by the inherent nature of a republican form of government.

Bill, Section X, paragraph B.

It is expressly guaranteed by the Fifth Amendment.

Bill, Section X, paragraph F.

It is impliedly guaranteed by the Fourteenth Amendment in its due process clause.

Bill, Section X, paragraph G.

It is again guaranteed by the immunities clause of the Fourteenth Amendment.

Bill, Section X, paragraph H.

It is also guaranteed by the guaranty of a republican form of government in Article IV, Section 4.

Bill, Section X, paragraph J.

It is also guaranteed by the state constitutions.

Bill, Section X, paragraphs M, P, R and S.

As is the case with the due process clause, these guarantees amply protect the people against confiscation even by attempted constitutional amendment.

E.

Delegated Powers.

The representatives of the people in their legislative assemblies act with a delegated authority. They are agents, and their acts are the acts of the people whom they represent. Clothed with the authority of agents, they are also subject to the correlative duties of agents—which are those of every fiduciary, and which above all include the duty of loyalty—and those correlative duties operate as limitations upon the delegated authority. While, therefore, our legislative assemblies are authorized to enact laws for the people, they are not authorized to enact laws which betray the people whom they represent.

This is a self-evident principle of law. It operates without constitutional enactment,

Loan Association v. *Topeka,* 20 Wall., 655,

and also it has been constitutionally declared. It will not be seriously questioned—in this country, at any rate.

Whom do the legislators represent?

There has been some doubt on this point. It has been supposed, for example, that Article V of the Constitution, the amendment clause, "delegates" to the state legislatures the authority to ratify proposed amendments. This is serious error, however. Whatever authority they possess is derived solely from the people who elect them. It cannot come from any other source, else they would owe a divided duty—a duty divided between the sources of their authority.

Such a situation would be impossible as a mere matter of practicability, because it would at once introduce an irreconcilable conflict of duties and oftentimes an equally irreconcilable conflict of interests. Moreover, it is impossible as a matter of law. The Federal Government cannot, even through the Constitution, delegate any authority to the states or the agencies of the states. The movement of authority is always in the opposite direction.

The truth is that instead of "delegating" any authority to the state legislatures to ratify amendments, the Constitution was adopted on the assumption that they already possessed it—which, as a matter of law, they did—and that authority was delegated to them by their own people.

The matter is of vital importance, for if the people of the states have delegated their power, they can also limit it, or take it away altogether.

It will not on careful consideration be long doubted that the peoples of the states can do both. The Florida Constitution, for example, in Article XVI, Section 19, provides as follows:

> "No convention nor legislature of this state shall act upon any amendment of the Constitution of the United States proposed by congress to the several states, unless such convention or legislature shall have been elected after such amendment is submitted."

This limitation upon the powers of the Florida legislature has been accepted without question, and if that, why not others? The amendment clause of the Constitution of the United States provides for amendment by popular convention. Can it be supposed for an instant that the peoples of the states cannot reserve the power of ratification to themselves and take it away from their legislatures altogether?

There can be no hesitation about the answer to these questions, and consequently, before any amendment to the Constitution is accepted as a part of the Constitution, the authority of the ratifying bodies should be inquired into and established. When the question is raised in the Federal courts, the duty to inquire into it is imperative under the Constitution, and no Federal court is at liberty to decline the investigation.

The "Eighteenth Amendment" involves the spoliation of the people and is an assault upon all their liberties, as has been already explained at length.

It is, therefore, a breach of the duty of loyalty which is imposed upon the legislators who voted for it and was in excess of their delegated authority, *ultra vires,* null and void.

Bill, Section X, paragraphs C, D, E, I, M, N, O, P, Q, R, S, T, U and V.

F.

The Two-thirds Rule.

We have hitherto discussed the "Eighteenth Amendment" from the point of view of substance as an invasion of reserved, inherent and inalienable rights.

We are now to approach it from the point of view of procedure, and are to consider whether it was validly adopted in accordance with the procedure prescribed by the Constitution of the United States for the proposal of amendments or additions to its own provisions.

Bill, Section X, paragraph L.

The Constitution directs in Article V that "the Congress whenever *two-thirds of both houses* shall deem it necessary, shall propose amendments to this Constitution." This article furnishes the only authority for Congress in the proposing of amendments and determines what action is necessary by that body before the constitutional process of amendment can be initiated. It calls for a vote of two-thirds of both houses, and the natural and normal significance of the phrase, the significance which immediately suggests itself, is that two-thirds of both houses means two-thirds of the full membership of each house. There has been an-

other interpretation of this phrase, however. It has been claimed that two-thirds of *the members present* is sufficient to meet the constitutional requirements.

That claim is necessary to support the present "amendment," because two-thirds of the full membership of both houses did not vote for the joint resolution which submitted it to the state legislatures. The validity of that proceeding is now the subject of our inquiry.

We have said that the obvious meaning of the phrase is that the concurrence of two-thirds of the full membership is requisite for the valid proposal of amendments. The argument to the contrary takes this form substantially:

> By the word "house" is intended a house organized for the transaction of business. A majority of a house constitutes a quorum for the transaction of business; therefore, it is concluded, a session of a "house" containing a quorum constitutes a "house" organized for the transaction of business, and a vote of two-thirds of the body so present comes within the constitutional requirements.

This argument gives to the word "house" a significance which attaches to no single word in the English language. "House" as applied to legislative bodies means either a legislative chamber of such a body or a quorum of such a chamber (see, for example, *Webster's Dictionary*). No dictionary gives any other meaning to it, and some dictionaries, such as the *Century*, do not even give it the meaning of "quorum." (For a full history of the word with

numerous quotations in chronological sequence see *Murray's New English Dictionary.*)

Now, when "house" denotes the chamber, it necessarily denotes the full membership of that chamber, which is a fixed number. When it denotes a quorum, it denotes a fraction of a membership of the chamber, usually a majority or the next integral number above a half, also a fixed number.

Neither of these meanings will satisfy the argument. The first, that the word "house" means the full membership, obviously defeats the argument, while the second leads to the following absurdity:

A quorum is a fixed number. Usually in our constitutions it is the next integral number above a half, and two-thirds of a quorum will in that case be the next integral number above a third of the whole. When three more than two-thirds of the whole are present, therefore, two-thirds of a quorum will be a minority. It follows, to a mathematical certainty, that if two-thirds of a quorum can propose amendments, then, when the whole membership is present, amendments can be proposed and carried by a minority vote, which is absurd.

What the argument has reference to, is a body which is not the full membership nor yet a quorum —both of which are fixed quantities—but a body which is composed of those members, not less in number than a quorum, who are actually present when the chamber is in session and transacting business. Such a body is not fixed in number, but fluctuates from a mere quorum as a minimum to the full membership as a maximum. It is usually, however, larger than the one and smaller than the other. There is no single word in the English language which designates it, and it certainly is not, and never has been, designated by the word

"house." The argument, therefore, gives to the word "house" a meaning which it has never possessed in the English language.

Again, the argument misapprehends the nature of a quorum, and because a quorum can *do* some of the business of the whole house the argument erroneously infers that it *is* the whole house.

This is a fundamental fallacy. A quorum does not become a whole house simply because it can do some of the things which the whole house can do. On the contrary, a quorum begins by being only a fixed fraction of the whole, and ends by being only a fixed fraction of the whole, and a fixed fraction never *is* and never *can become*, the whole. Whatever happens or can happen is that certain powers of the whole (never all the powers, however) are conferred upon the fraction, and that thereupon the acts of the fraction within the prescribed limits become the acts of the whole. It still remains true that, just as it is a fallacy to say that the agent *is* the principal because he can *do* some of the things which the principal can do, so it is a fallacy to say that the fraction *is* the whole because it can *do* some of the things which the whole can do.

Hitherto we have confined ourselves to pointing out defects in the argument which are not conditioned upon the terms of the instrument in which the word "house" is employed, but which would necessarily apply whenever such a phrase is used in any constitution. If possible the argument makes even a worse showing when it is collated with the full text of the Constitution itself.

In the first place, it commits a very real and wholly fatal *petitio principii*. It begs the question. It bases its conclusion upon the assumption in the premises that the conclusion is true. Consequent-

ly, if the conclusion is not true in the premise, it is not true in the conclusion; and in any event the argument is not advanced to the truth.

The assumption is that the word "house" means house as organized for the transaction of business. Now a House of Congress is organized for the transaction of most business when a majority, that is to say, a quorum, is present (Art. I, Sec. 5), but not for all business. The Senate is not organized for the business of trying the President on articles of impeachment unless the Chief Justice of the Supreme Court is present to preside over the trial (Art. I, Sec. 3). The House of Representatives is not organized for the business of electing a President in the case of a tie vote in the Electoral College unless representatives from two-thirds of the states are present (Art. II, Sec. 1). Either House is organized for the transaction of some business, such as the business of adjourning or of summoning absent members, even if less than a quorum is present (Art. I, Sec. 5). Neither House is organized for the business of proposing the amendments to the Constitution unless there are enough members present to give the vote which the Constitution requires.

If the Constitution requires the vote of two-thirds of the full membership, a house is not organized for the business of proposing amendments unless at least two-thirds of the full membership is present. If the Constitution is satisfied with the vote of two-thirds of the members present not less than a quorum, then the House is organized for the business of proposing amendments whenever not less than a quorum is present. The first alternative the argument denies; the latter is the very con-

clusion to be proved. The conclusion is not proved by making it the premise of the argument.

In the second place the argument ignores the constitutional definition of the word "house," just as it ignores the definition of it in common speech. The Constitution ordains that the Congress of the United States "shall consist of a Senate and House of Representatives" (Art. I, Sec. 1), that "the House of Representatives shall consist of members chosen every second year by the people of the several states" (Art. I, Sec. 2); and that "the Senate of the United States shall be composed of two senators from each state chosen by the legislature thereof" (Art. I, Sec. 3).

These are the definitions to which we must look when we would know the constitutional meaning of the word "house." When the Constitution says "both houses," it means the Senate and the House of Representatives. When it means the Senate, it means the body composed of two senators from each state chosen by the legislature thereof. When it means House of Representatives it means the chamber composed of members chosen every second year by the people of the several states. With these definitions contained in the Constitution itself, the conclusion is compulsory that two-thirds of both houses means two-thirds of the members chosen every second year by the people of the several states, and two-thirds of the senators from each state chosen by the legislature thereof.

In the third place the argument overlooks the general constitutional use of the word "house." There are, for example, five fractions of a legislative house mentioned at various times in the Constitution. Illustrations of these fractions are as follows:

"Two-thirds of both houses" (Art. II);

"Two-thirds of the members (of the Senate) present" (Art. I, Sec. 3);

"A majority of each (house)" (Art. I, Sec. 5);

"A smaller number (than a majority of each house)" (Art. I, Sec. 5);

"One-fifth of those (members of either house) present" (Art. I, Sec. 5).

In the last four of these fractions the whole house constitutes the unit of which the fraction is a part, and there is everything in the sequence to indicate that the same unit is assumed in the first fraction. If, for example, "a majority of each (house)" denotes a majority of the full membership, what does "two-thirds of both houses" mean? Again, outside of the name "House of Representatives," the word "house" is used twenty-two times in the Constitution, either expressly or by reference in an elliptical phrase. In nineteen instances it necessarily denotes the whole house composed of all its members. In the other three it is used in connection with the fraction two-thirds. If there had been any intention to give the word a different meaning in those three cases, some qualifying phrase would have been necessary to indicate it. The absence of any such qualifying phrase is conclusive proof that no difference was intended.

Still again, the Constitution provides (Art. II, Sec. 3) that the President "may on extraordinary occasions *convene both houses.*" Here obviously the President must convene the whole membership. If the phrase "both houses" means the whole house for the purposes of convening, what does it mean for the purpose of proposing amendments? If it had been intended to refer to different things

on different occasions, it would have been necessary to introduce a qualifying clause to distinguish them.

In all these instances we find the argument introducing a qualifying phrase in circumstances in which its absence conclusively proves that it was not intended.

In the fourth place the argument ignores those instances in which a distinguishing and qualifying phrase is actually employed in the Constitution. The necessity is to have the word "house" defined as that fluctuating body composed of members present, not less than a quorum, which is neither the fixed number of the full membership nor an equally fixed number of a quorum or majority, but the argument overlooks the fact that the Constitution employs a specific and appropriate phrase for that particular fraction of the membership. "*Two-thirds of the members present*" are necessary to a conviction by the Senate on articles of impeachment. "*One-fifth of those present*" may demand the yeas and nays (Art. I, Sec. 5); "*two-thirds of the senators present*" must concur in the making of a treaty (Art. II, Sec. 2). Now, if the Constitution uses a qualifying phrase in three instances, when the qualification was intended, why was it not used on all such occasions?

In the fifth place, in one of the three instances in which the two-thirds fraction is used in connection with the word "house," the argument produces an irremediable absurdity. When the President disapproves a bill passed by both houses, he returns it "to *that house* in which it shall have originated," who shall thereupon reconsider it, and "if after such reconsideration two-thirds *of that house* shall agree to pass the bill," it shall be sent

"to the other house" and "if approved by two-thirds *of that house* it shall become a law" (Art. I, Sec. 7).

One thing is clear in that veto clause of the Constitution: That legislative body *in* which a bill originates, *through* which it passes, *to* which it is returned by the President, and *by* which it is reconsidered and transmitted *to* the other house, is one and the same during the whole process—a legislative entity, unitary and continuing.

Now, only the house as a whole constitutes a legislative continuing entity. A quorum certainly does not fit the description. It disappears upon adjournment and does not come into existence again. When the house reconvenes, a new quorum is formed. Between sessions, there is no quorum at all. Consequently when the President returns a bill, he must return it to the whole house. He cannot return it to *that quorum* in which it originated. The same considerations apply even more strongly to that fluctuating body of members present which the argument requires. It disappears upon adjournment; it shifts and changes even during a continuous session; and a bill which originates in it cannot afterwards be returned to it.

Now observe the conclusion: if the words "that house" in the phrase requiring the President to return the bill to "that house in which it shall have originated" does not mean a quorum and does not mean the body of members not less than a quorum, but means the full membership of the house, then the phrase "that house" in the clause that "if after such reconsideration two-thirds of that house shall agree to pass the bill" must necessarily mean the full membership. Things which are equal to the same thing are equal to each other, and the whole house in which the bill originates must be the whole

house in which the reconsideration is to take place.

Furthermore, if two-thirds of the house in which the bill originates agrees to pass the bill, it shall then be sent to "the other house." What does "other house" mean in that phrase except the other of the two houses of a Congress consisting of the Senate and the House of Representatives?

The succeeding clause of that article of the Constitution relates to concurrent resolutions and declares that they shall not become a law unless "repassed by *two-thirds of the Senate and House of Representatives*, according to the Rules and Regulations prescribed in the case of a bill" (Art. I, Sec. 7). Here the requirement of a two-thirds vote of the whole house is expressly made, and at the same time, too, the regulations for bills are expressly made identical with the regulations for concurrent resolutions. There is no room for doubt that the word "house" in the veto clause means the whole house and not merely a quorum of it, and not merely that fraction of it which constitutes all the members present, not less than a quorum.

In the sixth place, and finally, the argument fails in the very clause under discussion. The Constitution provides the amendments to it may be proposed by a vote of "two-thirds of both houses" (Art. V). We cannot, however, make the substitution of words that ought to be possible if they mean the same thing. We cannot say that amendments may be proposed by two-thirds of both quorums; still less can we say that they may be proposed by two-thirds of both bodies of members present not less than a quorum. The Constitution does not say those things because it does not mean them.

This Court has held in the case of

Missouri Pacific Ry. Co. v. *Kansas*, 248 U. S., 276,

that the so-called Webb-Kenyon Law, regulating interstate traffic in liquors, was constitutionally passed by Congress over the President's veto, although it was only passed by a two-thirds vote of the Senators present and not by two-thirds of the whole Senate. It is therefore a decision relating to the two-thirds provision in Article I, Section 5 of the Constitution. It is not a decision as to the interpretation of the words "both houses" in the Fifth Article of the Constitution. It does indeed discuss the interpretation of the amendment clause, but its discussion is necessarily *obiter* and not conclusive. It is not, and cannot be, conclusive, either upon the rights of those who are not parties to that suit, or upon the interpretation of a clause of the Constitution not then before the Court for construction.

Even if the decision on the construction of the veto clause of the Constitution were conclusive upon the construction of the amendment clause in the same instrument, we should nevertheless contend that we are within our rights in asking the Court to re-examine it upon new grounds.

In constitutional questions there can be no doctrine of *stare decisis*, and the reason is this: No human tribunal is immune to the possibility of error—not even this Court, to which the people of this country so confidently look as the bulwark of their liberties. What happens, therefore, when it erroneously interprets, or erroneously applies, a constitutional provision? It has no power to amend

the Constitution, and the constitutional provision still remains the law. No number of judicial decisions can change the Constitution, and just as it is possible and proper for any attorney to challenge the constitutionality of an act of the state legislature or of Congress as repugnant to the Constitution, so it is possible and proper for an attorney to challenge any decision of this Court upon proper grounds as repugnant to the Constitution. In the exercise of that right and with the utmost respect to this Court, we submit here our reasons for believing that the decision of this Court in the *Missouri Pacific* case is repugnant to the Constitution, and that a bill is not passed over the President's veto unless it receives the votes of two-thirds of the full membership of both houses of Congress, and that an amendment is not constitutionally proposed to the states unless it receives the votes of two-thirds of the members of both houses.

We have already given some of the reasons sustaining our argument. It remains now to consider the opinion of this Court in the *Missouri Pacific* case.

The Court begins its consideration of the question by saying that

> "we might adversely dispose of it [that is, the contention that the bill was not properly passed over the President's veto by a vote of two-thirds of the full membership] by merely referring to the practice to the contrary which has prevailed from the beginning."

We submit, however, that no practice can change a constitutional provision, and no practice, con-

temporaneous or subsequent, is admissible to vary its terms. If the contrary were true, our Constitution would be but a scrap of paper, amendable, repealable, destructible, by the whim of any series of Congresses that might choose to disregard it.

The Court, further stating the contention of counsel, goes on to say:

> "As the context leaves no doubt that the provisions (*i. e.*, Art. I, Sec. 5) was dealing with the two houses as organized and entitled to exert legislative power, it follows that to state the contention is to adversely dispose of it."

With deference to the Court, we submit that, according to the context, to state the argument is to prove it. A house organized and entitled to exert legislative power is the whole house and not the quorum. When the yeas and nays are taken, the entire membership must be called, and the whole house is in session. Although only a quorum is present, the statute is enacted, as declared in the enacting clause, "By the Senate and House of Representatives of the United States of America in Congress assembled." The provision therefor necessarily means the whole house and not any fraction of it. Consequently the context sustains the argument instead of disposing of it adversely.

The Court goes on to say that the "erroneous assumption upon which the contention proceeds is plainly demonstrated by a consideration of the course of proceedings in the convention which framed the Constitution," and it thereupon refers to a record of those proceedings. Again we submit with deference that the course of proceedings in

the convention are quite immaterial to the interpretation of the Constitution. That instrument was submitted to the people as a completed whole. The proceedings of the Constitution were studiously kept from their cognizance and they were called upon to judge the instrument by its face and not by the preceding negotiations of which it was the outcome. Nothing, therefore, but the Constitution itself can be logically or lawfully the source of its interpretation.

The Court goes on to say:

> "A further confirmation of this view is afforded by the fact that there is no indication in the constitutions and laws of the several states existing before the Constitution of the United States was framed that it was deemed that the legislative body which had power to pass a bill over a veto was any other than the legislative body organized conformably to law for the purposes of enacting legislation, and hence that the majority fixed as necessary to override a veto was the required majority of the body in whom the power to legislate was lodged."

Granted, but again we submit with deference that the inference is quite the opposite to that which the Court drew. The body in whom the power to legislate is lodged is, as we have said before, the whole house, and the enactment of a bill is the act of the whole house and not the act of the mere quorum. That appears from the fact that the whole house must be called on roll call and from the enacting clause of all statutes.

The Court goes on to say:

> "Indeed, the absolute identity between the body having authority to pass legislation and the body having the power in case of a veto, to override it, was clearly shown by the Constitution of New York (1777), since that Constitution, in providing for the exercise of the right to veto by the council, directed that the objections to the bill be transmitted for reconsideration to the Senate, the house in which it originated; 'but if after such reconsideration, two-thirds of the said Senate or House of Assembly, notwithstanding the said objections, agree to pass the same, it shall * * * be sent to the other branch of the legislature, where it shall also be reconsidered and if approved by two-thirds of the members present, shall be a law'—thus identifying the bodies embraced by the words 'Senate' and 'House' and definitely fixing the two-thirds majority required in each as two-thirds of the members present."

Again, with deference we submit that the state constitution thus cited clearly establishes the distinction between two-thirds of the whole house and two-thirds of the members present, and that no interpretation of it is possible except that two-thirds of the whole house in which the bill originated was necessary to its repassage, although two-thirds of the members present of the other house was sufficient to make its repassage effective.

The Court goes on to say that

> "The identity between the provision of article V of the Constitution, giving the power by a two thirds vote to submit amendments, and the requirements we are considering as to the two-thirds vote necessary to override

> a veto, makes the practice as to the one applicable to the other."

It then proceeds to cite the record of the first session of Congress at which the first ten amendments to the Constitution were proposed. The records thus cited declare that the Senate concurred in the proposal of the amendments, "two-thirds of the senators present concurring therein," and that the house also concurred, "two-thirds of the members present concurring on each vote." Upon those records as a premise the Court declares that the first ten amendments were

> "all adopted and submitted by each house organized as a legislative body pursuant to the Constitution by less than the vote which would have been necessary had the constitutional provision been given the significance now attributed to it. Indeed, the resolutions by which the action of the two Houses was recorded demonstrate that they were formulated with the purpose of refuting the contention now made."

Again, with deference to this Court, we submit that proof that two-thirds of the members present concurred in the vote is not proof that two-thirds of the whole house did not concur. *Non constat* that more than two-thirds of the senators present concurred, enough to make two-thirds of the whole house, and *non constat* that the whole house was not present and that consequently two-thirds of the members present was not two-thirds of the whole house. Proof that twelve men did vote for a proposition is not proof that fifteen men did not vote for it. Some of the amendments seem to have been accepted unanimously.

The Constitution provides that the yeas and nays must be taken on the motion of one-fifth of the members present. It seems to have been the early practice not to record the yeas and nays except when so demanded, and it is more than probable that the record of the actual votes on the first ten amendments is lost forever. The resolution by which the amendments were submitted to the state legislatures reads, "Two-thirds of both Houses concurring," and under those circumstances the formal record of the adoption of the amendments pursuant to the requirements of Article V is complete. There can be no real question that the first ten amendments were properly adopted.

The Court then goes on to say:

> "The construction which was thus given to the Constitution in dealing with a matter of such vast importance, and which was necessarily sanctioned by the states and all the people, has governed as to every amendment to the Constitution submitted from that day to this. This is not disputed and we need not stop to refer to the precedents demonstrating its accuracy. The settled rule, however, was so clearly and aptly stated by the Speaker, Mr. Reed, in the House, on the passage in 1898 of the amendment to the Constitution providing for the election of Senators by vote of the people, that we quote it."

Mr. Reed's remarks are then quoted as follows:

> "The question is one that has been so often decided that it seems hardly necessary to dwell upon it. The provision of the Constitution says 'two-thirds of both houses.' What constitutes a house? A quorum of the membership, a majority, one-half and one

> more. That is all that is necessary to constitute a house to do all the business that comes before the House."

This passage cited from the ruling of Speaker Reed excellently illustrates the confusion which has attended the discussions of this problem. He says that a majority of the house is one-half and one more. It may on occasion, that is, when the number of members is uneven, be one-half and *one half* more. Mr. Reed also says that a majority is all that is necessary to constitute a house to do the business that comes before the house. That again is not correct. On some matters, as we have seen, more than a majority is necessary for the transaction of business by a house. Thus the House of Representatives cannot elect a President in the case of a tie vote in the Electoral College unless Representatives of two-thirds of the states are present. These errors in Mr. Reed's ruling detract greatly from its authority. Moreover, it cannot be reiterated too often that the Constitution cannot be changed by practice or by the rulings of presiding officers. It prescribes its own methods of amendment, and the practices and rulings of the House of Congress are not among them.

After again referring to the practice as to the adoption of amendments to the Constitution and the practice of voting on repassage of bills over presidential veto, the Court cites a number of cases in other jurisdictions among the state courts. They arise, of course, under other instruments than the Constitution of the United States, and consequently are not conclusive as to that instrument. Above all, they cannot override it.

Our examination of the opinion of this Court in the *Missouri-Pacific* case discloses the following facts:

1. It does *not* discuss the meaning of the word "house" in the English language; on the contrary, it gives it a meaning which has no precedent.

2. It does *not* consider the constitutional definitions of the Senate and House of Representatives which constitute "both Houses."

3. It does *not* discuss the general use of the word "house" in the Constitution, either in connection with the various fractions of a house or in its general connections.

4. It does *not* discuss the constitutional phrase "two-thirds of the members present," or its significance in indicating that when the Constitution intends that fraction, it uses that phrase to indicate its intention.

5. It does *not* discuss the possibility of substituting its definition of the word "house" in place of the language used in the Constitution.

6. It does *not* discuss the difference between a quorum and the body of members present, not less than a quorum. Apparently it confuses the two, because in one place it speaks of "a two-thirds vote of the senators present (a quorum)," and in another place it speaks of "a quorum (a majority) of the members of each House (Sec. 5, Art. I)."

7. It does *not* contain any reference to the text of the Constitution, except a brief reference to the "context" of the instrument and

to the "identity" between the veto provisions and the amendment provisions of the Constitution.

8. It *does* discuss the proceedings in the Constitutional Convention.

9. It *does* discuss "the constitution and laws of the several states existing before the Constitution of the United States was framed."

10. It *does* discuss the practice in adopting amendments to the Constitution.

11. It *does* discuss some of the records of Congress.

12. It *does* discuss certain rulings in Congress.

13. It *does* discuss certain judicial decisions rendered in the state courts under other instruments.

14. In fine, it *does* discuss many collateral matters, but it does *not* discuss the instrument to be construed.

The dominating feature of the opinion is the constant references to the practice in adopting the prior amendments of the Constitution; and undoubtedly, if the requirements of the Constitution have not been followed in adopting them, a grave and serious problem is certainly presented. It may be that some of the amendments have not in fact become a "part of the Constitution." There seems to be no ground for apprehension concerning the first ten amendments, because the joint resolution of the houses of Congress conforms to the constitu-

tional requirements, and the possibility of disputing the accuracy of its recital that two-thirds of both houses concurred in it has probably disappeared by the lapse of time. As to the later amendments, however, there may be some doubt, and it may be that the doubt can only be resolved by an examination of the original records of the Congressional proceedings. If that is so, the matter should be immediately determined. The American people cannot afford to leave its organic law in doubt. Above all, it cannot afford to have its organic law depend upon an interpretation of a word which is without historic precedent, or upon an interpretation which does not take into account the definitions of the word which the organic law itself contains.

POINT VI.

In Conclusion.

Upon all grounds we submit that the bill should be filed. It is within the jurisdiction of the Court with respect to subject-matter and parties, and it is sufficient on its merits.

New York, January 2, 1919.

EDWARD HOLLANDER,
Solicitor for Defendants.

EVERETT V. ABBOT,
GEORGE W. TUCKER,
BENJAMIN TUSKA,
of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. Original.

In Equity.

WILLIAM DUHNE, Complainant,

against

THE STATE OF NEW JERSEY, A. MITCHELL PALMER, ATTORNEY GENERAL OF THE UNITED STATES; JOSEPH L. BODINE, UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF NEW JERSEY, AND DANIEL C. ROPER, COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, Defendants.

On Rule to Show Cause why leave should not be granted to file original Bill of Complaint.

SPECIAL APPEARANCE OF THE STATE OF NEW JERSEY, ON RETURN OF RULE TO SHOW CAUSE.

THE STATE OF NEW JERSEY,
By THOMAS F. McCRAN,
Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. Original.

In Equity.

WILLIAM DUHNE, Complainant.

against

THE STATE OF NEW JERSEY, A. MITCHELL PALMER, ATTORNEY GENERAL OF THE UNITED STATES; JOSEPH L. BODINE, UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF NEW JERSEY, AND DANIEL C. ROPER, COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, Defendants.

SPECIAL APPEARANCE OF STATE OF NEW JERSEY, ON RETURN OF RULE TO SHOW CAUSE FOR LEAVE TO FILE BILL OF COMPLAINT.

Now comes the State of New Jersey, by Thomas F. McCran, Attorney-General thereof, in obedience to the command of a rule to show cause made on the twenty-second day of December, nineteen hundred and nineteen, appearing specially and solely for the purpose of objecting to the jurisdiction of this court as to the State of New Jersey, a party defendant, and asks that permission to file said original bill of complaint against the State of New Jersey be denied, and rests its request upon the following grounds:

I. The bill of complaint discloses that the complainant is a citizen of the State of New Jersey, and is, therefore, barred from instituting an action against the State of New Jersey without its consent.

II. The consent of the State of New Jersey to the filing of said bill or the institution of this action has not been granted by said State, and said State refuses to consent thereto.

III. This Honorable Court is without jurisdiction over the State of New Jersey in the premises.

GENERAL STATEMENT.

The State of New Jersey has been served with a rule to show cause why a motion for leave to file a bill of complaint in the Supreme Court of the United States on behalf of the complainant above and against the defendants named above, including the State of New Jersey, should not be granted. This is an original bill in the Supreme Court. In substance, it alleges that the complainant, who is engaged in the business of selling liquor at West New York in the State of New Jersey, will be injured by the enforcement of the Eighteenth Amendment of the Constitution of the United States and the act of Congress entiled "An act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of high-proof spirits for other than beverage purposes and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye and other lawful industries," and prays the court to restrain, by injunction, the defendants and each of them from doing anything to enforce the said amendment and the said statute. The State of New Jersey is named as a party defendant in its sovereign capacity. The bill prays that process may be directed to and an injunction issued against the State. The complainant sets forth in said complaint that he is a citizen of the State of New Jersey.

The bill of complaint, therefore, presents this state of facts: A citizen of the State of New Jersey requests the Supreme Court of the United States, in the exercise of its

original jurisdiction, to entertain a suit against the State of New Jersey, without the consent of said State.

Mr. Justice Miller, in *Cunningham* v. *Macon and New Brunswick Railroad*, 109 *U. S.* 446, 451, says:

> "It may be accepted as a point of departure unquestioned that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which a State may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution."

It is respectfully urged that this case is not within the exception.

POINT 1.

THE STATE OF NEW JERSEY CANNOT COMPULSORILY BE MADE A SUITOR IN AN ORIGINAL ACTION IN THE SUPREME COURT OF THE UNITED STATES INSTITUTED BY A CITIZEN OF SAID STATE.

The pertinent parts of the Constitution are as follows:

Article III.

Section 1.

> The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. * * *

Section 2.

> 1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treatises made, or

which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambasadors, other public ministers and consuls, and those in which a state shall be a party the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

In *Louisiana* v. *Texas*, 176 *U. S. at page* 16, the Court says:

> "The language of the second clause of the second section of Article III of the Constitution, 'in all cases in which a State shall be a party' means in all the enumerated cases in which a State shall be a party, and this is stated expressly when the clause speaks of the other cases where appellate jurisdiction is to be exercised. This second clause distributes the jurisdiction conferred in the previous one into original and appellate jurisdiction, but does not profess to confer any. The original jurisdiction depends solely on the character of the parties and is confined to the cases in which are those enumerated parties and those only."

The above quoted provisions of the Constitution were modified by the Eleventh Amendment as follows:

> "The judicial power of the United States shall not be construed to extend to any suit in law or

equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

In *California* v. *The Southern Pacific Company*, 157 *U. S.* 229, Chief Justice Fuller, in his dissenting opinion uses the folowing language:

"If by virtue of the subject matter, a case comes within the judicial power of the United States, it does not follow that it comes within the original jurisdiction of this court. That jurisdiction does not obtain simply because a State is a party. Suits between a State and its own citizens are not included within it by the Constitution."

A suit directly against a State by one of its own citizens is not one to which the judicial power of the United States extends, unless a State itself consents to be sued.

Hans v. *Louisana*, 134 *U. S. Rep.* 1.

North Carolina v. *Temple*, 134 *U. S. Rep.* 22.

Fitts v. McGhee 172 U.S. 516-524

In *Osborn* v. *The Bank of the United States* (9 *Wheat. Reports, p.* 846), Chief Justice Marshall says:

"In cases where a State is a party on the record, the question of jurisdiction is decided on inspection."

LEAVE TO FILE THE BILL OF COMPLAINT AGAINST THE STATE OF NEW JERSEY SHOULD BE DENIED.

THE STATE OF NEW JERSEY,
By THOMAS F. MCCRAN,
Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

WILLIAM DUHNE, COMPLAINANT,
v.
THE STATE OF NEW JERSEY et al., defendants.
} No. —, Original.

RESPONSE TO ORDER TO SHOW CAUSE.

In response to the order of the court to show cause, the defendants, A. Mitchell Palmer, Attorney General of the United States; Joseph L. Bodine, United States attorney for the District of New Jersey; and Daniel C. Roper, Commissioner of Internal Revenue, say that the bill wholly fails to state a case of which this court can take original jurisdiction.

I.

The bill is an effort to attack the validity of the eighteenth amendment to the Constitution, which is as follows:

> SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

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> SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Congress, on October 28, 1919, passed an act known as the "Volstead Act," which provides, in detail, for the enforcement throughout the United States of this amendment.

The plaintiff is a citizen of the State of New Jersey, engaged in that State in the business of a liquor dealer, and seeks now to enjoin the enforcement of the Volstead Act. It is not claimed that that act is invalid if the eighteenth amendment is valid and a part of the Constitution. The validity of the amendment, however, is assailed on various grounds.

The defendants named in the bill are the State of New Jersey, the Attorney General of the United States, the district attorney for the District of New Jersey, and the Internal Revenue Commissioner of the United States. The reason alleged for making these parties defendants is that the amendment provides that the States shall have concurrent power with Congress to enforce the amendment by appropriate legislation, and that under the Volstead Act the duty of enforcing the provisions of that act are imposed upon the Department of Justice and the Commissioner of Internal Revenue.

The controversy is alleged to be one between a citizen of the State of New Jersey, on the one hand, and the State of New Jersey and certain officials of the United States on the other. The prayer is that the Federal officials named be enjoined, either per-

sonally or through their subordinates, agents, or employees, from interfering with the business of the plaintiff as a liquor dealer or using the name or authority of the United States of America or of the State of New Jersey in any proceedings in law or in equity against the plaintiff in any court of the United States or any court of the State of New Jersey on account of any alleged violation of the provisions of the eighteenth amendment or the Volstead Act. There is no prayer for relief against the State of New Jersey, and the only allegation in the bill relating in the remotest degree to any action contemplated by that State is the following:

> There is grave danger that the defendant the State of New Jersey may against its will and by force of arms or otherwise be compelled to aid and assist the defendants A. Mitchell Palmer, Daniel C. Roper, and Joseph L. Bodine in the attempted enforcement of the bill aforesaid, and of the so-called Eighteenth Amendment to the Constitution of the United States, all in violation of its sovereign rights guaranteed to it as a sovereign State by the Constitution of the United States.

II.

Apparently the theory of the bill is that the naming of a State as a defendant gives this court original jurisdiction under the second paragraph of section 2 of Article III of the Constitution, which is as follows:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in

which a State shall be Party, the supreme Court shall have original Jurisdiction.

There are two conclusive answers:

1. The bill does not present any controversy between the plaintiff and the State of New Jersey and prays for no relief against that State.

2. The plaintiff is a citizen of the State of New Jersey, and, consequently, if a controversy existed between him and that State, this court would not have original jurisdiction thereof. Article III, section 2, of the Constitution, in defining the cases to which the judicial power of the United States shall extend, includes within that power controversies "between a State and citizens of another State," but does not include controversies between a State and its own citizens.

As to controversies between a State and citizens of other States, the Eleventh Amendment denies to the United States court jurisdiction where such suit is brought against the State as a defendant. *Hans* v. *Louisiana*, 134 U. S. 1, 15, et seq.

III.

The real controversy sought to be presented by the bill is one between the plaintiff and officials of the United States Government, who are charged with a purpose to destroy the plaintiff's business under the color of a law which is, in fact, no law. This court is wholly without original jurisdiction over such controversy.

1. If the case be treated as one against the defendants as individuals, it could not be claimed for a

moment that the suit could be commenced in this court. If the controversy is one which would be cognizable in any Federal court, this court, under section 2 of Article III of the Constitution, would have only appellate jurisdiction.

2. If it be treated as, in fact, a suit against the United States, it is equally plain that jurisdiction fails.

(*a*) A suit by an individual against the United States is not one of the cases in which the section of the Constitution above quoted confers original jurisdiction upon this court.

(*b*) The United States can not be sued in any court except when it has consented thereto. (*Stanley* v. *Schwalby*, 162 U. S. 255, 269, 270.) It has not consented to be sued except in the Court of Claims and the District Courts of the United States, as provided in sections 24 (20) and 145 of the Judicial Code.

It is respectfully submitted that, in no possible view of the case, does the bill present a controversy of which this court has original jurisdiction.

ALEX. C. KING,
Solicitor General.
WILLIAM L. FRIERSON,
Assistant Attorney General.

DECEMBER, 1919.

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IN THE

SUPREME COURT OF THE UNITED STATES.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

MOTION TO FILE PETITION AND BRIEF IN SUPPORT OF SAID MOTION.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

MOTION TO FILE PETITION, AND BRIEF IN SUPPORT OF SAID MOTION.

And now come James F. Bishop, Administrator of the Estate of Otto E. Anderson, Deceased, James F. Bishop, Administrator of the Estate of Elizabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, and Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased, and move the court for leave to file a petition for a

Writ of Prohibition, which petition is herewith presented to the court.

JAMES F. BISHOP,
Administrator of each of said Estates of Otto E. Anderson, Deceased, Elizabeth Harke, Deceased, Robert J. T. Riker, Deceased, and John E. Wilkinson, Deceased.

ROSIE ALBERTZ,
Administratrix of the Estate of Mary Albertz, Deceased.

HARRY W. STANDIDGE,
Proctor.

IN THE

Supreme Court of the United States

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

BRIEF IN SUPPORT OF MOTION.

Petitioners pray for a writ of prohibition, and such other relief as to the court may seem meet, to prevent the carrying out of orders entered in a proceeding brought by the St. Joseph-Chicago Steamship Company to limit its liability as owner of the steamer Eastland, the tipping over of which steamer in the Chicago River on July 24, 1915, caused the deaths of the above named, and more than 800 other, deceased persons, by which orders the court has allowed and directed the payment of the claim of the Great Lakes Towing Company for $34,500, with interest, under a contract made by it with said St. Joseph-Chicago Steamship Company for the raising of said steamer after it tipped over, upon pro-

ceedings had and taken by said Great Lakes Towing Company before the appointment of your petitioners as administrator and administratrix of said estates of said above named deceased persons, and before they had appeared, and before the expiration of the time described in the monition and fixed by the court for them to appear, in said proceeding, and without notice to them, and which said orders also were entered by the court after your petitioners and several hundred other claimants who are in like situation with them, with pleadings on file questioning the jurisdiction of the court, had been deprived of a hearing by being in effect defaulted and otherwise denied due process of law; and the court, also, after so entering said orders, denied petitioners an appeal therefrom.

Said limitation proceeding was begun on August 17, 1915, after said steamer had been raised under said contract, and a monition was issued and executed by publication in said proceeding, citing "all persons claiming damages for any loss, destruction or injury occasioned by the listing, turning over and sinking of the said steamer," to appear and make proof of their claims and answer said limitation petition on or before the first Monday in December, 1915, "or within such further time as this court may grant," a copy of which monition is attached to the petition (pp. 14-16), presented herewith, and the court, on December 6, 1915, and various subsequent dates, entered orders extending the time to file and make proof of claims until August 5, 1916, and extending the time to answer or except to said petition until August 15, 1916.

On and prior to January 18, 1916, which was before your petitioners were appointed as administrator and administratrix of said estates of said above named deceased persons, and before they, or any of them, or any of the parties whom they represent as administrator and administratrix of said estates, had appeared, and before the expiration of the time described in the monition and fixed by the court for them to appear, in said limitation proceeding, and without notice to them, or any of them, said Great Lakes Towing Company took the following action in said proceeding: On September 1, 1916, it filed a petition or claim, which it has never at any time had any rule entered upon any one to plead to, alleging that it raised said steamer under said contract, and praying the court to pronounce in favor of its said claim and grant to it a "preferred, paramount and first lien on said steamer;" on December 20, 1915, by order of court, it procured the sale of said steamer, and on January 3, 1916, had the proceeds of said sale paid into court; on said 3d day of January, 1916, also, it filed a written motion asking that an order be entered directing the payment of its said claim, on January 7, 1916, it served notice on the comparatively few claimants (not including your petitioners), who at that time had appeared in said proceeding, that on January 17, 1916, it would introduce evidence "in support of said motion," and on January 18, 1916, it introduced the only evidence introduced at any time in said proceeding in regard to its said claim, which evidence tended to show the performance by it of its said contract on which it based its said claim.

Your petitioners were appointed as administrator

and administratrix of said estates of said above named deceased persons on February 2, 1916, July 13, 1916, and July 19, 1916, and on July 22, 1916, in said limitation proceeding, they filed verified claims for the deaths of said deceased persons for $10,000 each, as allowed by the admiralty laws and the laws of the State of Illinois, and on July 31, 1916, they filed exceptions to said petition and objections to the allowance of said claim of said Great Lakes Towing Company, and a motion that said evidence which said Great Lakes Towing Company introduced on January 18, 1916, be expunged from the record, and that said claim and any and all relief asked by said Great Lakes Towing Company be denied, for the reasons that said evidence was introduced without notice to petitioners, and each of them, and without said petitioners, or any of them, being present or represented at the hearing thereof, and also for reasons set forth in said exceptions so filed by your petitioners to said petition, as aforesaid, which said exceptions, objections and motion are the only pleadings at any time filed by your petitioners, or any of them, to or in regard to said petition or claim or motion of said Great Lakes Towing Company, and copies of which are attached to the petition (pp. 17-22) presented herewith, and on August 14, 1916, petitioners filed exceptions to said limitation petition in said proceeding, all of which action was taken by your petitioners within said time described in the monition and fixed by the court for such purpose as aforesaid, and like action was taken by several hundred other tort claimants who are in like situation with your petitioners.

On August 16, 1916, the court heard arguments upon said exceptions filed by petitioners to said petition of said Great Lakes Towing Company, and took the matter under advisement, and on November 3, 1916, upon consideration of said petition and claim and motion of said Great Lakes Towing Company, and the pleadings thereto, including answers of various parties other than your petitioners (no answer thereto having at any time been filed by any of your petitioners), and said exceptions to said petition and objections to the allowance of said claim, filed by your petitioners and other claimants, said evidence introduced by said Great Lakes Towing Company on January 18, 1916, and said motion filed by your petitioners to have said evidence expunged from the record and said claim and any and all relief asked by said Great Lakes Towing Company denied, and the same, or a similar, motion filed by other claimants, and the court, for the reasons above set forth, having no jurisdiction to grant said relief, or any part thereof, found that "said Great Lakes Towing Company is not entitled to the relief prayed for by it in its said petition and motion to have its said claim decreed a preferred, paramount and first lien on said steamer or the proceeds thereof," and ordered "that said prayer of said petition and motion be and the same are hereby denied," a copy of which order is attached to said petition (pp. 22-23) presented herewith.

The Court of Appeals, on the appeal taken from said order thereto by said Great Lakes Towing Company, and on the same, and only the same, record on which said District Court acted, denied a motion

made by petitioners and other claimants to dismiss said appeal on the ground that said order appealed from was not a final or appealable order or decree, and reversed same and remanded the cause with directions to allow said claim, with interest and costs, and thereupon said District Court, on the application of life salvor claimants who had intervened, entered an order allowing said claim in accordance with the mandate of said Court of Appeals, and shortly thereafter entered another order or decree sustaining exceptions to the claims of said life salvors and allowing said claim of said Great Lakes Towing Company as a "first, preferred and paramount lien against the funds now in the registry of this court arising from the sale of the steamer Eastland," from which order said life salvors have appealed and filed their appeal bond, thereby staying the carrying out of said decree until said appeal shall be disposed of, and the court has entered an order denying petitioners' application for an appeal from said orders, copies of which said orders are set forth in said petition (pp. 8, 23-26) presented herewith.

BRIEF.

I.

THE COURT HAD NO JURISDICTION TO ENTER, AND IT TRANSCENDED ITS POWER AND AUTHORITY IN ENTERING, THE ORDERS COMPLAINED OF, AND THE RELIEF WHICH PETITIONERS PRAY FOR SHOULD BE GRANTED.

Ex Parte Indiana Trans. Co., Pet'r., 244 U. S. 456.

Ex parte Poultney v. *City of La Fayette et al.*, 12 Pet. (37 U. S.), 472, 474-5.

In re Eastern Dredging Co., 159 Fed. 549, 551.

Montgomery, et al., Claimants of Steamer Republic, v. *Anderson*, 21 How. (62 U. S.), 386, 387-8.

Great Lakes Towing Co. v. *St. Joseph-Chicago Steamship Co.*, 253 Fed. 635, 638.

Coe v. *Armour Fertilizer Works*, 237 U. S. 413, 424-5.

Galpin v. *Page*, 18 Wall. (85 U. S.) 350, 368-9.

Windsor v. *McVeigh*, 93 U. S. 274, 277.

Baker v. *Baker, Eccles & Co.*, 242 U. S. 394, 403.

Postal Tel. Cable Co. v. *City of Newport, Ky.*, 247 U. S. 464, 476.

ARGUMENT.

I.

THE COURT HAD NO JURISDICTION TO ENTER, AND IT TRANSCENDED ITS POWER AND AUTHORITY IN ENTERING, THE ORDERS COMPLAINED OF, AND THE RELIEF WHICH PETITIONERS PRAY FOR SHOULD BE GRANTED.

In *Ex Parte* Indiana Trans. Co., Petitioner, 244 U. S. 456, which case also arose out of said Eastland disaster, a writ of prohibition was granted to prevent the carrying out of an order directing petitioner to answer an amended libel filed by the original and additional libellants, because petitioner had been served only with a monition citing him to appear to answer the libel of said original libellant, and he was not bound by said order entered as to said additional libelants before being required by proper process to appear and answer unto them.

In *Ex Parte Poultney* v. *City of La Fayette, et al.*, 12 Pet. (37 U. S.) 472, upon an affidavit stating, *inter alia*, that there were upwards of two hundred defendants, and that time in addition to that named in the process citing them was necessary to make proper defense and secure the ends of justice, the court entered a rule upon complainants to show cause why defendants should not be allowed additional time to appear and defend, and ordered that in the meantime "no further step or proceeding be

had in the case." Complainants moved to proceed under the equity rules of the Supreme Court, under which "the complainants would have been entitled to proceed on their bill as confessed, if the defendants did not appear and file their answer within three months after the day of appearance limited to these rules." The motion was denied, and the court said (pp. 474-5):

> "We think the court did right in refusing this motion. Every court of equity possesses the power to mould its rules in relation to the time and manner of appearing and answering, so as to prevent the rule from working injustice; and it is not only in the power of the court, but it is its duty, to exercise a sound discretion upon this subject, and to enlarge the time, whenever it shall appear that the purposes of justice require it. The rules prescribed by this court do not, and were not intended to, deprive the courts of the United States of this well-known and necessary power; and the facts stated in the affidavit before referred to, certainly presented a case in which it was proper to exercise it."

In the proceeding in question herein, there were upwards of one thousand claimants.

In *In re* Eastern Dredging Co., 159 Fed. 549, 551, it is said:

> "Each damage claimant has the right to be heard in opposition to every other claim."

In the proceeding in question herein, petitioners appeared and filed their claims and pleaded to the limitation petition within the time described in the monition and fixed by the court for them so to do, and they were not bound by the proceedings previously taken therein, without notice to them by said Great Lakes Towing Company, which company was

not cited by said monition, which cited only "persons claiming damages for any loss, destruction or injury occasioned by the listing, turning over and sinking of the said steamer."

After petitioners did appear and file exceptions to said petition and objections to the allowance of the claim of said Great Lakes Towing Company, and a motion to expunge from the record the evidence introduced by it without notice to them and before they appeared in said proceeding, and to deny the relief which it asked, neither the District Court nor the Court of Appeals had any jurisdiction to allow, or direct the allowance or payment of, said claim of said Great Lakes Towing Company without first passing upon said exceptions to its said petition and said motion to strike out said evidence and deny it the relief which it asked for, and until such motions were passed upon, petitioners could not properly, and they were not required to, proceed further. The District Court, on said pleadings and procedure thereunder, found that said Great Lakes Towing Company was not entitled to the lien which it prayed for, and denied the prayer of its said petition and motion for such lien. Whether this was or was not a final order, the Court of Appeals had no jurisdiction to set aside the same and direct the allowance of said claim of said Great Lakes Towing Company, without first passing upon petitioners' said exceptions to said petition of said Great Lakes Towing Company, and their said motion to expunge said evidence which it introduced, and deny it said relief which it asked, and giving petitioners an opportunity to be heard upon the various questions of fact involved, including the reason-

ableness of the amount of said claim, if said exceptions should be overruled and said motion denied, and the fact that it denied such rights to petitioners and directed the allowance of said claim, did not give the District Court jurisdiction to allow and direct the payment of said claim. (See *Montgomery et al., Claimants of Steamer Republic*, v. *Anderson*, 21 How. (62 U. S.) 386, 387-8.)

The Court of Appeals in the proceeding in question (253 Fed. 635, 638), said:

> "Though some of the appellees in their pleadings challenged the amount of the consideration, they offered no evidence to prove that it was unfair."

Manifestly petitioners could not properly have introduced any such evidence before the court passed upon the preliminary questions of law raised by their said pleadings, and the court had no jurisdiction to, in effect, default them and deny them a hearing because they did not do so.

The Court of Appeals seems to have overlooked the fact that petitioners and several hundred other claimants who had not appeared in said limitation proceeding when said action was taken by said Great Lakes Towing Company in regard to its said claim had not been heard in reference thereto, and that they should be heard upon the reasonableness of the amount of the claim involved, even if all other questions should be determined against them.

In *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413, 424-5, the court said that it was contended that the complaining party "in fact learned of the execution before his property was sold or even his possession

was disturbed, and he had an opportunity for a hearing in the present proceeding as to all questions upon which his liability depended," and the court added:

> "The fallacy of this is that it ignores the issue of law raised by the petition of plaintiff in error, and substitutes an issue of fact for which he was not summoned and which he has not consented to litigate. * * *
>
> Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires. In *Stuart* v. *Palmer*, 74 N. Y. 183, 188, which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said: 'It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunty to be heard.'"

In *Galpin* v. *Page*, 18 Wall. (85 U. S.) 350, 368-9, it is said:

> "It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered."

In *Windsor* v. *McVeigh*, 93 U. S. 274, 277, the court says:

> "A sentence of a court pronounced against a

> party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal."

The court then states that in *Woodruff* v. *Taylor*, 20 Vt. 65, the subject of proceedings *in rem* is "elaborately considered," and that it was therein observed that "it was just as material to the validity of a judgment *in rem* that constructive notice at least should appear to have been given as that actual notice should appear upon the record of a judgment *in personam*." And the court, quoting from the opinion in that case, adds:

> "'A proceeding,' continued the court, 'professing to determine the right of property, where no notice, written or constructive, is given, whatever else it might be called, would not be entitled to be dignified with the name of a judicial proceeding. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court.'"

The court also says (p. 282), that "though the court may possess jurisdiction of a cause, of the subject-matter and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by law," and that a judgment will be "absolutely void" if the court shall "transcend the limits of its authority."

And the court further states (pp. 283-4) that "jurisdiction is the right to hear and determine; not to determine without hearing."

In *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 403, it is said:

> "The fundamental requisite of due process of law in judicial proceedings is the opportunity to be heard. *Louisville & Nashville R. R. Co.* v. *Schmidt*, 177 U. S. 230, 236; *Simon* v. *Graft*, 182 U. S. 427, 436; *Grannis* v. *Ordeau*, 234 U. S. 385, 394. To hold one bound by the judgment who has not had such opportunity is contrary to the first principles of justice."

In *Postal Tel. Cable Co.* v. *City of Newport, Ky.*, 247 U. S. 464, 476, the court states:

> "The opportunity to be heard is an essential requisite of due process of law in judicial proceedings."

In the proceeding in question in the case at bar, in addition to having no jurisdiction to enter said orders allowing and directing the payment of said claim of said Great Lakes Towing Company because petitioners were deprived of a hearing, the court also had no jurisdiction to enter said orders without first determining the questions as to the right of said limitation petitioner to the limitation prayed for, and what the respective rights of your petitioners and said Great Lakes Towing Company consequent upon such determination are, and the court after having entered said orders had no jurisdiction to deny your petitioners an appeal therefrom.

Your petitioners therefore respectfully pray the court that their motion to file said petition presented herewith be granted.

Respectfully submitted,

HARRY W. STANDIDGE,
Proctor for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

PETITION.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF OTTO E. ANDERSON, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ELIZABETH HARKE, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF ROBERT J. T. RIKER, DECEASED, JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF JOHN E. WILKINSON, DECEASED, AND ROSIE ALBERTZ, ADMINISTRATRIX OF THE ESTATE OF MARY ALBERTZ, DECEASED, FOR A WRIT OF PROHIBITION.

PETITION.

To the Honorable the Judges of the Supreme Court of the United States:

Your petitioners, James F. Bishop, Administrator of the Estate of Otto F. Anderson, Deceased, James F. Bishop, Administrator of the Estate of Elibabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, and Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased, on behalf of themselves and all other aggrieved parties, in this their petition against the Honorable George

A. Carpenter, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, sitting in Admiralty, respectfully represent:

1. Said James F. Bishop is the duly appointed and qualified administrator of the estate of each of the following above named deceased persons: Otto E. Anderson, Elizabeth Harke, Robert J. T. Riker and John E. Wilkinson, and was appointed as said administrator of said estate of John E. Wilkinson, Deceased, on July 13th A. D. 1916, and of said Estates of Otto E. Anderson, Elizabeth Harke and Robert J. T .Riker, each deceased, on July 19th A. D. 1916, by the Probate Court of Cook County, Illinois.

2. Said Rosie Albertz is the duly appointed and qualified administratrix of the Estate of Mary Albertz, Deceased, and was appointed as said administratrix on February 2nd A. D. 1916, by said Probate Court of Cook County, Illinois.

3. Each of said above named, and more than eight hundred other, deceased persons, lost his or her life while a passenger on the steamer Eastland, by reason of the tipping over of said steamer in the Chicago River, in Chicago, Illinois, on July 24, 1915.

4. On August 17, 1915, the St. Joseph-Chicago Steamship Company, under sections 4283, 4284 and 4285 of the Revised Statutes of the United States, and the various acts amendatory thereof and supplemental thereto, filed in said District Court a limitation proceeding praying for limitation of its liability incurred as owner of said steamer, a steam vessel of more than one thousand tons burthen, by reason of the tipping over thereof as aforesaid, and

on August 19, 1915, it transferred said steamer to a trustee appointed by the court in said limitation proceeding.

5. On August 21, 1915, in said limitation proceeding, the court issued an injunction restraining the prosecution of any and all suits, actions and proceedings against said steamer or said petitioner for limitation of liability, "in respect of any claim for damages, loss, destruction or injury on account of said disaster," and on August 27, 1915, the court issued a monition which, in accordance with its terms, was returned executed by publication only, citing "all persons claiming damages for any loss, destruction or injury occasioned by the listing, turning over and sinking of the said steamer," to appear and make proof of their respective claims and answer said petition on or before the first Monday in December, 1915, "or within such further time as this court may grant," a copy of which monition is attached hereto and make a part hereof, and on December 6, 1915, and at various times thereafter, orders were duly entered by the court extending the time for filing and making proof of claims until August 5, 1916, and extending the time for excepting to or answering said petition until August 15, 1916.

6. On September 1, 1915, the Great Lakes Towing Company filed in said limitation proceeding a petition or claim alleging that on July 27, 1915, it made a contract with said St. Joseph-Chicago Steamship Company to raise said steamer for $34,500, and that it had performed said contract, and praying that the court "will pronounce in favor of its claim and will decree that it has a preferred, paramount and

first lien upon said steamer Eastland which has been surrendered and transferred to a trustee in pursuance of said limitation proceedings."

7. Said Great Lakes Towing Company never at any time had any order entered upon anyone to answer or plead to its said petition or claim, and without any such order, and when only a comparatively few claimants had appeared in said limitation proceeding, before the appointment of your petitioners, or any of them, as administrator and administratrix of the estates of said above named deceased persons, and before your petitioners, or any of them, or any of the parties whom they represent as such administrator and administratrix of said estates of said deceased persons, and before any of several hundred other claimants, had appeared, and prior to the expiration of the time described in the monition and fixed by the court for them to appear, in said proceeding, as aforesaid, and without notice to them, or any of them, said Great Lakes Towing Company, under a petition filed by it, and by order of court entered pursuant to said petition, had said steamer sold on December 20, 1915, and the proceeds of said sale paid into the registry of the court on January 3, 1916, and then immediately on said 3rd day of January, 1916, filed a written motion for an order for the payment of its said claim, on January 7, 1916, it served notice on the comparatively few claimants then in court, that on January 17, 1916, it would introduce evidence "in support of said motion," and on January 18, 1916, it introduced the only evidence introduced at any time in said proceeding in regard to its said claim, which evidence

tended to show the performance by it of its said contract on which it based its said claim.

8. On July 22, 1916, after your petitioners had been appointed as administrator and administratrix of said estates of said above named deceased persons, all of which appointments were subsequent to the time of said proceedings so taken by said Great Lakes Towing Company in said limitation proceeding, as aforesaid, your petitioners duly filed in said limitation proceeding verified claims for damages for the deaths of said above named deceased persons, on behalf of the surviving husband, widow or next of kin of each of said deceased persons, each of said claims being for ten thousand dollars, in accordance with, and as allowed by, the admiralty laws and the laws of the State of Illinois, and on July 31, 1916, they filed in said proceeding exceptions to said petition of said Great Lakes Towing Company and objections to the allowance of its said claim, and a motion to expunge from the record said evidence in regard to its said claim which, on January 18, 1916, it introduced in said proceeding without notice to your petitioners, or any of them, and before they, or any of them, had appeared in said proceeding, as aforesaid, and to deny its said claim and any and all relief asked by it in regard thereto, for the reasons that said evidence was introduced without notice to petitioners, and each of them, and without said petitioners, or any of them, being present or represented at the hearing thereof, and also for reasons set forth in said exceptions so filed by your petitioners to said petition, as aforesaid, which said exceptions, objec-

tions and motion are the only pleadings at any time filed by your petitioners, or any of them, to or in regard to said petition or claim or motion of said Great Lakes Towing Company, and copies of which are attached hereto and made a part hereof, and on August 14, 1916, petitioners filed exceptions to said limitation petition in said proceeding, all of which action was taken by your petitioners within said time described in the monition and fixed by the court for such purpose, as aforesaid, and like action was taken by several hundred other tort claimants who are in like situation with your petitioners.

9. On August 8, 1916, the court heard arguments upon said exceptions of petitioners and other claimants to said petition of said Great Lakes Towing Company, and took the matter under advisement.

10. On November 3, 1916, the court entered an order reciting that the cause came on to be heard upon said petition and claim and motion of said Great Lakes Towing Company, the answers (namely, the answers of various supply claimants and parties other than tort claimants to said petition and claim, no answer thereto having at any time been filed by any of your petitioners or any of said other tort claimants, as aforesaid), said exceptions to said petition and objections to the allowance of said claim filed by petitioners on July 31, 1916, and filed by other tort claimants on said date and prior thereto, the evidence (namely, said evidence introduced by said Great Lakes Towing Company in regard to its said claim on January 18, 1916, and which was the only evidence introduced in regard thereto, as aforesaid), and said motion to expunge said evidence

and deny said claim filed by petitioners on July 31, 1916, and filed by other tort claimants on and before said date (and no other pleadings to or in regard to said petition or claim or motion of said Great Lakes Towing Company having at any time been filed by any of your petitioners or any of said several hundred other tort claimants who are in like situation with your petitioners as aforesaid), and the court, for the reasons above set forth, having no jurisdiction to grant any of said relief prayed for by said Great Lakes Towing Company as aforesaid, found that "said Great Lakes Towing Company is not entitled to the relief prayed for by it in its said petition and motion to have its said claim decreed a preferred, paramount and first lien on said steamer or the proceeds thereof," and ordered "that said prayer of said petition and motion be and the same are hereby denied," a copy of which order is attached hereto and made a part hereof.

11. Said Great Lakes Towing Company appealed from said order of November 3, 1916, to the Circuit Court of Appeals for the Seventh Circuit, and petitioners and other claimants moved said Court of Appeals to dismiss said appeal on the ground that said order appealed from was not a final and appealable order or decree, and your petitioners also contended in said Court of Appeals that, for the reasons above set forth, the court had no jurisdiction to grant to said Great Lakes Towing Company said relief which it prayed for as aforesaid.

12. On July 23, 1918, said Court of Appeals, on the same, and only the same, record and proceedings upon which said District Court entered said order or

decree, denied said motion to dismiss said appeal, and reversed and remanded said decree of said District Court, and directed said District Court to allow said claim of said Great Lakes Towing Company, with interest and cost, on November 19, 1918, said Court of Appeals amended said decree so that as amended it provides for the allowance of interest on said claim at five per cent per annum from the time of the filing thereof, and on April 7, 1919, said Great Lakes Towing Company filed in said District Court the mandate of said Court of Appeals, directing the allowance of said claim with interest and costs, in accordance with said amended decree.

13. On December 16, 1919, on motion of life salvor claimants who had previously intervened, said District Court entered an order in accordance with said mandate of said Court of Appeals, providing that "It is ordered that the claim of the Great Lakes Towing Company for $34,500, with interest at five per cent from date of filing said claim for salving the steamer Eastland be and the same is hereby allowed, in accordance with the terms of said mandate, saving and reserving to the salvors of human life, who have heretofore filed their claims herein, the right to have their claims to a fair share thereof adjudicated."

14. On December 23, 1919, said District Court entered the decree herein complained of providing for the allowance of said claim of said Great Lakes Towing Company as a first, perferred and paramount lien, entering judgment thereon and directing the payment thereof, a copy of which said decree is attached hereto and made a part hereof, and which

is based upon said proceedings taken by said Great Lakes Towing Company in regard to its said claim before petitioners appeared, and before the expiration of the time described in the monition and fixed by the court for them to appear, in said limitation proceeding, as above set forth, and which said decree, without due process of law, deprives petitioners of their right to plead to said petition or claim and motion of Said Great Lakes Towing Company, and have proper issues made on said pleadings, before a hearing thereon, their right before such a hearing to have due notice thereof, their right at such a hearing to be present and represented and cross-examine witnesses, object to and move to strike out evidence and take such other lawful action as they might deem proper, including their right to demand that "the trial of issues of fact shall be by jury," or that there shall be a jury trial "upon the consent of the parties who shall have appeared and put any matter of fact in issue," in accordance with sections 1583 and 1585 of Volume 3 of the United States Compiled Statutes (1916 edition), pages 3140 and 3152, respectively, and their right to demand that there be no trial of any matter of fact not properly at issue, and to contest each matter of fact, including the question as to the reasonableness of the amount of the claim involved, if the preliminary questions of law should be determined against them, each and all of which rights the court had no jurisdiction to deprive them of, and therefor the court had no jurisdiction to enter said decree, and said court also, without jurisdiction, denied petitioners an appeal from said decree as hereinafter set forth.

15. Said Great Lakes Towing Company did not in its said petition or claim or motion or otherwise allege that said limitation petitioner was not entitled to the limitation of liablity which it prayed for, and that for such, or any other, reason your petitioners and said other tort claimants were not entitled to defend against its said claim and to avail themselves of their rights in the premises of which they have been deprived as aforesaid, and at no time offered or introduced any evidence tending so to show.

16. At the time of the entry of said decree on December 23, 1919, there were, and there now are, pending in said limitation proceeding, petitioners' said death claims, and several hundred other death, personal injury and supply claims, at the time of the entry of said decree, also, there was, and there now is, in the registry of said District Court, arising from the sale of said steamer, after deducting the governmental distribution fee of one per cent. the sum of $41,598.41, which sum, by agreement of all parties, has been invested in United States Victory Liberty Loan 4¼% Bonds, the question as to the alleged right of said limitation petitioner to said limitation which it prays for has not been determined, and said limitation petition stands for hearing upon said exceptions filed thereto by your petitioners and other tort claimants as aforesaid and said injunction prohibiting petitioners and said other claimants from prosecuting their said claims in other proceedings remains in full force and effect, and the court had no jurisdiction to enter the orders complained of without first determining whether

said limitation petitioner is or is not entitled to the limitation prayed for and what the respective rights of your petitioners and said other tort claimants and said Great Lakes Towing Company consequent upon such determination are.

17. Said action of the court improperly has caused and is causing your petitioners great expense, inconvenience, trouble and annoyance in seeking to prevent said unlawful action of the court in depriving them of their rights, and also in seeking to prevent the carrying out of said orders and decrees, so entered by the court without jurisdiction, as aforesaid, and will continue so to do unless this court grants to petitioners the relief herein prayed for.

18. After the entry of said order of December 23, 1919, the court entered an order reducing to $1,000 the amount of the appeal bond required by said order to be filed by said life salvor claimants and extended the time for the filing thereof, and on January 17, 1920, said life salvor claimants filed said appeal bond, and the carrying out of said order of December 23, 1919, has been and is stayed thereby.

19. On February 4, 1920, petitioners served notice on the proctors for said Great Lakes Towing Company and other interested parties, that petitioners appealed from said order and decree of December 23, 1919, and that on February 5, 1920, before said Judge Carpenter, at the opening of court, or as soon thereafter as petitioners' proctor could be heard, petitioners would, and they did, file in said District Court their petition for appeal from said order of December 23, 1919, and also said order

of December 16, 1919, and assignment of errors therefor, and prayed the court to grant said appeal, and said court then and there entered an order denying said appeal, a copy of which order is attached hereto and made a part hereof.

Petitioners, therefore, on behalf of themselves and all other aggrieved parties, respectfully pray that a writ of prohibition may issue against the said George A. Carpenter, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, and each other judge of said court, prohibiting him and them from proceeding or allowing proceedings under said orders and decrees of December 16, 1919, and December 23, 1919, and each thereof, or from proceeding or allowing proceedings under said orders or decrees, and each thereof, insofar as the same allow said claim of said Great Lakes Towing Company for $34,500, and interest at five per cent per annum from the date of the filing thereof, or for $41,883.98, or any other sum, with costs to be taxed, as a first, preferred and paramount lien against the funds now in the registry of said District Court arising from the sale of said steamer, or otherwise, enter judgment thereon for said sum of $41,883.98, with interest until paid at five per cent. and also for costs to be taxed, and direct the Clerk of said District Court to pay the amount of said judgment to said Great Lakes Towing Company, or to its proctors of record, from said funds now in the registry of said District Court,

and that the court grant such other and further relief as to the court may seem meet.

JAMES F. BISHOP,
Administrator of each of said Estates of Otto E. Anderson, Deceased, Elizabeth Harke, Deceased, Robert J. T. Riker, Deceased, and John E. Wilkinson, Deceased.

ROSIE ALBERTZ,
Administratrix of said Estate of Mary Albertz, Deceased.

HARRY W. STANDIDGE,
Proctor for Petitioner.

STATE OF ILLINOIS, }
COUNTY OF COOK } ss.

James F. Bishop, being duly sworn, says that he is the duly appointed and qualified administrator of each of said estates of Otto E. Anderson, Deceased, Elizabeth Harke, Deceased, Robert J. T. Riker, Deceased, and John E. Wilkinson, Deceased, and as such is one of the above named petitioners; that he has read the foregoing petition and knows the contents thereof and that the same is true as he verily believes.

JAMES F. BISHOP.

Subscribed and sworn to before me
this 25th day of February A. D. 1920.

L. A. KELLY,
Notary Public in and for Cook County, Illinois.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK }

Rosie Albertz, being duly sworn, says that she is the duly appointed and qualified administratrix of said estate of Mary Albertz, Deceased, and as such is one of the above named petitioners; that she has read the foregoing petition and knows the contents thereof and that the same is true as she verily believes.

ROSIE ALBERTZ.

Subscribed and sworn to before me
this 26th day of February A. D. 1920.

RAY C. LYON,
Notary Public in and for Cook County, Illinois.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

In the matter of the Petition of St. Joseph-Chicago Steamship Company, Owner of the Steamer Eastland, for Limitation of Liability. } No. 33231.

MONITION.

The President of the United States of America, To the Marshal of the United States, For the Northern District of Illinois, Greeting:

Whereas, a petition was filed in the District Court of the United States for the Northern District of

Illinois, on the 17th day of August, 1915, by the St. Joseph-Chicago Steamship Company, as owner of the Steamer Eastland, praying for a limitation of its liability concerning the loss, damage or injury occasioned by the listing, turning over and sinking of the said Steamer on the 24th day of July, 1915, for the reasons and causes in said petition mentioned and praying that a monition of the said court in that behalf be issued and that all persons claiming damages for any loss, damage or injury by reason of the said listing, turning over and sinking of the said steamer may be thereby cited to appear before the said court and make due proof of their respective claims and all proceedings being had, that if it shall appear that the said petitioner is not liable for any such loss, damage or injury it may be so finally decreed by this court.

And whereas, the court on the 19th day of August, 1915, entered an order appointing Denis Sullivan, Trustee to receive the transfer of the said steamer from the said petitioner and the said court having ordered that a monition issued against all persons claiming damage for any loss, destruction or injury, done, occasioned or incurred by the listing, turning over and sinking of the said steamer, citing them to appear and make due proof of their respective claims.

You are therefore commanded to cite all persons claiming damages for any loss, destruction or injury occasioned by the listing, turning over and sinking of the said steamer to appear before said court and make due proof of their respective claims, before Lewis F. Mason, a U. S. Commissioner at his office

in the U. S. Post Office Building in the City of Chicago, Illinois, on or before the first Monday of December, 1915, at 10 o'clock in the forenoon, and you are also commanded to cite such claimants to appear and answer the allegations of the petition herein, on or before said last named date or within such further time as this court may grant and to have and receive such relief as they may be entitled to.

And, that you make publication of this monition in the Chicago Daily Law Bulletin, a newspaper publlished in the City of Chicago, once a week for twelve (12) weeks, and that the first publication of said monition be at least three (3) months, before the first Monday in December, 1915.

And, what you have done in the premises, do you then make and return to this court, together with this writ.

Witnesseth, the Honorable Kenesaw M. Landis and George A. Carpenter, Judges of the District Court of the U. S. for the Northern District of Illinois, this 27th day of August, 1915, and of the Independence of the United States the 140th.

T. C. MacMillan,

(Seal) *Clerk.*

By Arthur E. Claussen,

Deputy Clerk.

Enter,

K. M. L.

MOTION TO EXPUNGE EVIDENCE AND DENY CLAIM.

In the District Court of the United States,
For the Northern District of Illinois,
Eastern Division.

In re Petition of St. Joseph-Chicago Steamship Company, for Limitation of Liability. } No. 32231.

And now come James F. Bishop, Administrator of the estate of Otto E. Anderson, Deceased, James F. Bishop, Administrator of the Estate of Elizabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased (names of other claimants omitted), respondents to said above mentioned petition for limitation of liability, by Harry W. Standidge, their proctor, and said respondents, and each of them, by their proctor, move the court to expunge from the record the evidence introduced by the Great Lakes Towing Company herein, in support of its alleged claim for raising the steamer Eastland, and to deny to said Great Lakes Towing Company any and all relief prayed for by it in its petition heretofore filed by it in reference to its alleged claim herein, and to deny said claim, and to deny the motion, if any, of said Great Lakes Towing Company for the payment of its alleged claim out of the limited liability fund, if any, herein, or out of the proceeds of the sale of the steamer Eastland, or otherwise, herein, and to deny to said Great

Lakes Towing Company any and all relief asked by it in regard to its said alleged claim, or otherwise herein, for the reasons that said evidence was introduced by said Great Lakes Towing Company herein without notice to said above named respondents, and each of them, or any of them, and without said respondents, and each of them, or any of them, being present or represented at the hearing of such evidence, also for reasons set forth in exceptions filed by said respondents to said petition of said Great Lakes Towing Company herein, and because the court has no jurisdiction to grant the relief, or any part thereof, asked by said Great Lakes Towing Company, and because the granting of any such relief by the court for the above and other reasons would be contrary to the rules of court governing said proceedings and contrary to law herein.

HARRY W. STANDIDGE,
Proctor for said above named Respondents.

(Endorsed) Filed July 31, 1916, T. C. MacMillan, Clerk.

EXCEPTIONS TO PETITION AND OBJECTIONS TO ALLOWANCE OF CLAIM.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In re Petition of St. Joseph-Chicago Steamship Company, for Limitation of Liability.

James F. Bishop, Administrator, of the estate of Otto E. Anderson, Deceased, James F. Bishop,

Administrator of the Estate of Elizabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased (names of other claimants omitted), respondents, by Harry W. Standidge, their proctor, except to the petition of the Great Lakes Towing Company to recover $34,500 out of the proceeds of the sale of the Steamer Eastland, and out of the limited liablity fund, if any, or otherwise, herein, and object to the allowance of such claim of said Great Lakes Towing Company for said amount, or any other amount, out of the proceeds of the sale of said steamer Eastland, or out of the limited liability fund, if any, or otherwise, herein, for the following reasons, namely:

1. The court is without jurisdiction to grant the prayer of said petition of said Great Lakes Towing Company, or to allow its said alleged claim out of the proceeds of the sale of the steamer Eastland, or out of the limited liability fund, if any, or otherwise, herein.

2. The pleadings and proceeding herein are insufficient for the granting of the prayer of said petition or the allowance of said claim out of the proceeds of the sale of said steamer, or out of the limited liability fund, if any, or otherwise, herein.

3. Said Great Lakes Towing Company claims said sum of $34,500 under a contract alleged to have been made with the owner of the steamer Eastland and the underwriters insuring said steamer, and for services performed under said contract prior to the

time said owner is alleged to have transferred its interest in said steamer to a trustee, and seeks payment out of a fund not subject to the payment of such contract claim.

4. The court is without jurisdiction to allow the payment of petitioner's said claim out of funds derived from the sale of said steamer after the transfer of the interest of the owner thereof to a trustee herein.

5. The claim of said petitioner for $34,500 is for service which was not salvage service, and is excessive, unjust and unreasonable, herein.

6. The allowance of said claim at the present stage of the proceedings herein would be illegal and improper, and would or might deprive these and various respondents of various rights herein.

7. The allowance of said claim on a hearing before the court herein before the ascertainment, filing and proof of other claims which have been or may be filed herein, would be illegal and improper.

8. Said petitioner is not within, and is not entitled to prove its said claim, under the monition herein, and is not entitled to a lien as prayed for in said petition, or to the payment of its said claim out of the proceeds of the sale of said steamer or the limited liability fund, if any, or otherwise, herein, and it is also seeking to prove its said claim otherwise than in accordance with said monition, and to have said claim allowed under improper and illegal procedure.

9. Said petitioner illegally and improperly presented evidence in regard to its said claim herein,

without notice to said above named respondents and each of them, or any of them, and without said respondents and each of them, or any of them, being present or represented, at said hearing.

10. Said petitioner is seeking illegal, improper and inconsistent remedies, under illegal, improper and inconsistent procedure, herein, contrary to the rights of the above named, and of other respondents to the original petition herein, and contrary to the rules of court and contrary to law.

11. Said petition of said Great Lakes Towing Company does not deny that the St. Joseph-Chicago Steamship Company is entitled to a limitation of liability as prayed for by said St. Joseph-Chicago Steamship Company in its original petition herein.

12. The allegations of said petition of said Great Lakes Towing Company are wholly insufficient to entitle said Great Lakes Towing Company to the relief, or any part thereof, prayed for by it in its said petition, and under the allegations of said petition it is not entitled to the relief, or any part thereof, prayed for by it therein.

13. Said Great Lakes Towing Company is claiming under a contract made with the owner of said steamer in a foreign port, and neither by the petition of said Great Lakes Towing Company, nor by the evidence, is any agreement for a lien on said steamer shown herein, and if said Great Lakes Towing Company did have any lien on said steamer, such lien was cut off when said steamer was transferred to a trustee herein.

14. Under the admiralty rules of the Supreme Court, and also under the limited liability statutes,

the proceeds of the sale of said steamer cannot be distributed among any other claimant or claimants than the tort claimants cited by the monition herein.

HARRY W. STANDIDGE,
Proctor for said Respondents.

(Endorsed) Filed July 31, 1916, T. C. MacMillan, Clerk.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Re Petition of St. Joseph-Chicago Steamship Company, Owner of Steamer "Eastland," for Limitation of Liability. } No. 32231.

In re Intervening Petition of Great Lakes Towing Company.

This cause coming on to be heard upon the intervening petition and claim of the Great Lakes Towing Company praying the court to decree that said Great Lakes Towing Company has a preferred and paramount maritime lien for salvage for Thirty-four thousand five hundred dollars ($34,500) against the said steamer "Eastland," and the motion of the said Great Lakes Towing Company for the payment of said amount out of the proceeds of the sale of said steamer as a preferred and paramount lien and claim against said steamer and the proceeds of said sale; and the court having heard and fully considered the said petition and claim and the motion, together with the answers and exceptions and objections filed herein to said petition and claim, and the evidence and the motion of various claimants made at and follow-

ing the close of petitioner's evidence; and having heard the arguments of counsel and being fully advised in the premises, doth find that the said Great Lakes Towing Company is not entitled to the relief prayed for by it in its said petition and motion to have its said claim decreed a preferred, paramount and first lien on said steamer or the proceeds thereof, and it is ordered that said prayer of said petition and motion be and the same are hereby denied.

And thereupon in open court the Great Lakes Towing Company, petitioner herein, gives notice of its intention to and does hereby appeal from this order and all parts thereof to the United States Circuit Court of Appeals for the Seventh Circuit.

KENESAW M. LANDIS,
Judge of said Court.

In the District Court of the United States,
For the Northern District of Illinois,
Eastern Division.

In the Matter of the Petition of St. Joseph-Chicago Steamship Company, owner of the Steamer Eastland, for Limitation of Liability.	Order No. 32231.

At a stated term of the District Court of the United States for the Northern District of Illinois, Eastern Division, held in the court rooms in the Federal Buiding in the City of Chicago, on the 23d day of December, 1919.

Present: Hon. George A. Carpenter, District Judge.

This cause coming on to be heard upon the appli-

cation of Sherwood S. Mattocks, on behalf of himself and other salvors of human life, to file amended claim, it is ordered by the court that leave be and the same is hereby given to the said petitioners to file their said amended claims and upon the application of the Great Lakes Towing Company for an order that the exceptions heretofore filed to the amended claims of the life salvors stand as exceptions to the said amended claims as amended, it is so ordered, and this cause coming on to be heard upon the said amended claims as amended and the exceptions of the Great Lakes Towing Company thereto, it is ordered by the court that the exceptions so filed to said amended claims as amended, which amount to a general demurrer and the exceptions that the services of the said life salvors and all and each of them were performed more than two years prior to the making or filing of any such claim and no sufficient excuse or reasons under the statute for said delay is given, be and the said exceptions are hereby sustained, and the other exceptions filed herein by the Great Lakes Towing Company are hereby overruled. Thereupon the said Sherwood S. Mattocks, for himself and the other life salvors, having elected to stand by their said claims as amended, it is ordered by the court that the said claims of said life salvors and each of them be and the same are hereby dismissed, to each of which said rulings and orders of the court sustaining the exceptions of the Great Lakes Towing Company and dismissing the said claims as amended, the said Sherwood S. Mattocks, on his own behalf and on behalf of other life salvors, by their proctors, duly excepted.

And now the cause coming on to be heard on the

motion and application of Great Lakes Towing Company, for a decree in accordance with the mandate of the Circuit Court of Appeals, it is now ordered, adjudged and decreed that the claim of Great Lakes Towing Company for thirty-four thousand five hundred dollars ($34,500), with interest at the rate of five per cent. per annum from September 1, 1915, amounting as of this date to forty-one thousand eight hundred eighty-three dollars and ninety-eight cents ($41,883.98), with costs to be taxed, is allowed as a first, preferred and paramount lien against the funds now in the registry of this court arising from the sale of the steamer Eastland. Judgment is accordingly rendered in favor of said Great Lakes Towing Company in said amount of forty-one thousand eight hundred eighty-three dollars and ninety-eight cents ($41,883.98), with interest until paid at five per cent., and also for costs to be taxed, and the clerk of the court is directed to pay the amount of said judgment to said Great Lakes Towing Company or to its proctors of record from said funds now in the registry of this court.

It is further ordered upon the application of the said Sherwood S. Mattocks, on his own behalf and on behalf of other life salvors, by their proctors, that payment of the amount of said judgment is hereby stayed for a period of fifteen days in order to allow an appeal from this decree. And it is ordered that on any such appeal, the bond shall be in the sum of twenty-five hundred dollars ($2,500), to be approved by this court.

And it is further ordered that in the event bond be not filed within fifteen days from the date of this

decree, the clerk shall make payments of the judgment as aforesaid.

(Enter) CARPENTER,
Judge.

23d Dec., 1919.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In re Petition of St. Joseph-Chicago Steamship Company to Limit Liability as Owner of the Steamer Eastland. } No. 32231.

On motion of James F. Bishop, Administrator of the Estate of Otto E. Anderson, Deceased, James F. Bishop Administrator of the Estate of Elizabeth Harke, Deceased, James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased, James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased, Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased (names of various other claimants omitted), claimants herein, by their proctor, for the allowance of an appeal in the above entitled cause from the orders and decrees entered herein on December 16th, A. D. 1919, allowing the claim of the Great Lakes Towing Company, and on December 23d, A. D. 1919, directing the payment to the Great Lakes Towing Company of its claim for $41,883.98, out of the proceeds of the sale of the steamer Eastland, to the United States Circuit Court of Appeals for the Seventh Circuit, and it appearing to the court that said claimants have filed their assignment of errors, it is ordered that said appeal be and the same is hereby denied.

(Enter) CARPENTER,
Judge of said Court.

5th Feb., 1920.

Minnesota State Library,
St. Paul.

No. ——

In the

Supreme Court of the United States

Petition of J. E. Broussard and Others for Mandamus to Obtain an Allowance of an Appeal from the Circuit Court of Appeals of the Fifth Circuit

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In the case of

WALTER J. CRAWFORD, TRUSTEE, *Appellant*,

vs.

J. E. BROUSSARD, ET AL., *Appellees*.

In the Circuit Court of Appeals, 5th Circuit.

SOL E. GORDON,
A. D. LIPSCOMB,
Attorneys for Appellees.

In the

Supreme Court of the United States

Petition of J. E. Broussard and Others for Mandamus to Obtain an Allowance of an Appeal from the Circuit Court of Appeals of the Fifth Circuit

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In the case of

WALTER J. CRAWFORD, TRUSTEE, *Appellant*, vs. J. E. BROUSSARD, ET AL., *Appellees*.	*In the Circuit Court of Appeals, 5th Circuit.*

No. ——

To the Honorable Justices of the Supreme Court of the United States:

The petition of Beaumont Rice Mills, a corporation, having its principal office, domicile and place of business in the State of Texas and County of

Jefferson, and of J. E. Broussard, J. M. Hebert, B. C. Hebert, J. A. Bordages, Sarah Hamshire, Marian Hamshire, Lelemarie Hamshire, M. S. Hamshire, Asa Hamshire, Marie Hamshire, Eunice Arceneaux, R. H. Hancock, Lena Broussard, J. Perry Broussard, and Paul Blevens and Rose Mary Blevens, minors, by their next friend, J. E. Broussard, residents and citizens of the said State and County, respectfully showeth:

I.

(1) That plaintiffs, all suing on behalf of Beaumont Rice Mills, brought their bill in equity in the District Court of the United States for the Eastern District of Texas at Beaumont on the 3d day of July, 1917, against Walter J. Crawford, trustee in Bankruptcy of Moore & Bridgman, Bankrupts, and against E. J. LeBlanc, his predecessor as trustee, to recover the sum of $11,651.25 and interest accumulated thereon, proceeds of the sale of a crop of rice known as the McCrimmin crop; same was a separate suit, separately styled and numbered in the nature of a plenary suit to try title; praying subpoena, and was not an intervention in bankruptcy proceedings. It was brought in conformity to directions of an opinion and decree of this court rendered at the October Term, 1912, in cause No. 83, styled *Hebert et al.* v. *Crawford*, reported in 228 U. S. 208. The delay in filing the suit was due, as pointed out in the petition, to the pendency of State Court proceedings just determined at the time the suit was filed in 1917.

(2) Plaintiffs alleged in their said bill and amendments thereto that said crop was the property of Beaumont Rice Mills acquired by it while operating as a partnership and under contracts made by the bankrupts with Beaumont Rice Mills whereby the Beaumont Rice Mills furnished the land, seed, water, and supplies required for production of said crop before the crop had any existence and with the understanding that said crop should stand as security for an existing indebtedness of $6,117 from the bankrupts as well as for said advancements, and that afterward, and before bankruptcy or contemplation of bankruptcy, and while the crop was a growing crop and had been watered once the petitioners agreed to take same over in satisfaction of their indebtedness, on condition that same be harvested and delivered to them by the bankrupts That same had been delivered to plaintiffs, at a total cost to plaintiffs of their previous indebtedness of $6,-117.03 and advances for rent, seed and other supplies and harvesting and shipping expenses in the amount of $5,209.45, making the total cost to plaintiffs, $11,326.48 besides interest, and plaintiffs had afterward sold same for $11,651.25, which sum, with interest thereon aggregating $13,131.50 had been taken from the plaintiffs and placed in the hands of defendant by one E. J. LeBlanc, a partner with the other plaintiffs in what was then the firm of Beaumont Rice Mills, since incorporated, and who had been a trustee of the same estate in bankruptcy, preceding Crawford.

(3) That the said E. J. LeBlanc, in taking said sum, had acted under the compulsion of an order of the former District Judge, Hon. David Bryant, made in a proceeding to which these petitioners were not parties and in its nature not a plenary trial, but that defendant Crawford was seeking to give conclusive effect thereto, and claiming title by virtue of said orders to the exclusion of any right in petitioners even to a hearing on their claim.

(4) The only grounds of Federal jurisdiction alleged in said bill or amendments were the facts of custody of the fund as herein stated and the following passage in said bill, to-wit:

> "The plaintiffs are citizens of the State of Texas and of the United States, residing in Jefferson County, and that defendants, Walter J. Crawford and E. J. LeBlanc, reside in the said State and County, and are herein sued in their character as Trustees in Bankruptcy and as an officer and former officer of this court, and the issues herein presented involve the construction and application of the Constitution and laws of the United States and application of a judgment of the Supreme Court of the United States (*Hebert* v. *Crawford*, 228 U. S. 208), relating to the same subject matter and parties herein involved."

(5) Nowhere in said bill was it alleged that defendants claimed said fund under any provision of the bankruptcy law, but it was alleged that defendant Crawford sought to hold same through giving conclusive effect to merely *ex parte* pro-

ceedings against LeBlanc, which, if given conclusive effect by the bankruptcy court as against these petitioners, would amount to a deprivation of property without due process of law.

(6) Nowhere in said bill did the plaintiffs assert any claim based upon the bankruptcy law.

(7) Nowhere in the pleadings of the defendants was any claim made that the sale or contracts under which plaintiffs claimed were violative of the bankruptcy law, or made in fraud of creditors or intended as preferences, but on the other hand, the defendant in his pleadings, declining to make any plea of confession and avoidance, stood upon his denial of any agreements ever having been made with the bankrupts, and upon pleas of *res adjudicata* and pleas of statutes of limitation.

(8) The prayer of plaintiffs' bill as amended was for a decree restoring them the proceeds of the crop, or in the alternative, for a decree charging it with the valid liens of the plaintiffs amounting to $11,326.48, and interest.

II.

The evidence conformed to the plaintiffs' pleading in every respect except that it showed the original $6,117.03 indebtedness to petitioners was entitled to a credit of $750. It showed said indebtedness bore five and one-half months' interest at the rate of eight per cent per annum; that the sale at $11,651.25, after the crop was harvested, sacked, hauled to warehouse and held for a favorable market was a good one and that the crop

had yielded better than was expected; that petitioners had their investment tied up in the crop from the middle of June till their sale of it in the following year; and these were the facts educed to show the value which the crop had as a growing crop when petitioners agreed to purchase it in June, at which time it was up and had received water once.

III.

The judgment of the trial court, after hearing all the evidence in open court, was that the contracts and sale were in fact made as alleged, and that plaintiffs were entitled to the proceeds of sale of the crop, and it was so ordered, District Judge Gordon Russell filing a full statement of the law and facts upon which his decision was based, conforming to the statements above made.

IV.

The trustee, Crawford, appealed from said judgment to the Circuit Court of Appeals of the Fifth Circuit of the United States at New Orleans, and the same was there reversed by a majority decision, which annulled the judgment and directed dismissal of the suit, in conflict, we believe, with the directions of this court, above referred to, holding that plaintiffs were entitled to a hearing on their claim both of title and as to their liens. The majority opinion signed by Circuit Judge Walker held the alleged sale to be void as to creditors; admitted the validity of plaintiffs' liens, but held that such liens of plaintiffs were destroyed as merged in the transfer which

they said was valid between the parties to it, though void as to creditors. The opinion was concurred in by District Judge Sheppard while Circuit Judge Batts filed a dissenting opinion, affirming in effect the findings and conclusions of District Judge Gordon Russell and declaring in respect of the majority judgment that he "could not concur in a judgment bringing about such palpably unjust results." The opinion of the majority was that petitioners were constructively charged with fraud of creditors because, as shown in their opinion on petition for rehearing, they considered that the crop in question, as a growing crop, bought at a time when they knew of their vendors' insolvency, had only cost plaintiffs $10,356.21 including the cost of harvesting, whereas it appeared they were able to sell it as a matured crop some six months later, for $11,651.25. These petitioners will be able to show by uncontradicted evidence in the record that the majority's finding of such discrepancy between sale price and purchase price was not correct, and that no one had bankruptcy or insolvency in contemplation at the time, and that there was no pleading raising such an issue.

V.

Petitioners show that by leave of the Circuit Court of Appeals they filed their petition for rehearing, which was overruled by Circuit Judge Walker and District Judge Sheppard by order entered on October 7, 1919, Circuit Judge Batts having resigned in the meantime.

VI.

That thereupon petitioners within three months presented to Circuit Judge Walker their petition for allowance of appeal, assigning errors that were assigned in the petition for rehearing including the violation of constitutional rights of petitioners by decreeing a cancellation and annulment of sale to petitioners in behalf of creditors without pleadings to warrant such decree, and other errors assigned raising constitutional questions. That the assignment of other errors, accompanying the petition for appeal, are set forth in full as exhibits hereto.

VII.

That thereupon the Honorable Richard W. Walker, Circuit Judge, the only circuit judge now on the bench in the Fifth Circuit, denied the petition for appeal.

VIII.

Petitioners show the court that the jurisdiction of the United States District Court was not invoked in said cause on the ground of diversity of citizenship or alienage, nor was it a case arising under any law mentioned in Section 128 of the Judicial Code, or in the amendments of 1915 and 1916 relating to the final jurisdiction of the Circuit Court of Appeals; nor was it "a proceeding, or cause arising under the bankruptcy laws," nor "a controversy arising in such proceedings," but it was a separate and independent suit on a cause of action arising under the Texas laws and which, under the provisions of Section 23a of the Bankruptcy Act, the petitioners had a right to bring

in any state court but for the fact that the United States District Court, having a concurrent jurisdiction with such courts to try title, excluded such other concurrent jurisdictions *only by reason of its custody* of the fund. * * * And the petitioners respectfully submit that the mere fact of such custody cannot operate to the exclusion of any remedy which the petitioners could properly have in that court or in this court as having power of review over it. And these petitioners also have their clear right of appeal to this court because of the violations of the constitution originating in the Circuit Court of Appeals, which are set out in the accompanying assignment of errors, and consist in this, namely:

(1) The purport and effect of the judgment of the Circuit Court of Appeals is to annul on behalf of creditors a sale to petitioners concededly valid as between the parties, and this without any pleading in confession and avoidance, in conflict with the directions for a fair trial given by this court in respect of this matter, in *Hebert* v. *Crawford*, 228 U. S. 208, and in conflict with the decesion of this court in the case of *Lutcher & Moore Lumber Co.* v. *Knight*, 217 U. S. 267.

(2) The purport and effect of the judgment of the Circuit Court of Appeals is to effectuate a forfeiture of valid liens, concededly good against all persons, the majority ruling being that such liens are destroyed by taking the transfer of the property, which transfer it annuls.

IX.

Petitioners have no other remedy that is adequate, for in no other way than by mandamus can they have the review as matter of right that is given them by the constitution and laws of the United States in such cases.

X.

Petitioners attach hereto as Exhibits A, B, C, and D, respectively, their Petition for Appeal, Assignment of Errors, Additional Assignment of Errors, and letter of the Honorable Circuit Judge Walker, denying the petition for appeal, and make reference to the transcript on appeal in the Circuit Court of Appeals in the said cause Number 3325, Walter J. Crawford, Appellant, *versus* J. E. Broussard, *et al.*, Appellees.

The petitioners, in the abundance of caution are prosecuting simultaneously an application for writ of certiorai, to which application and the record accompanying same, reference is here made for the purpose of enabling the court to verify these statements, if it sees fit to do so.

Your petitioners humbly pray that Your Honors would be pleased to order that a writ of mandamus, in due form, be at once issued from this court, returnable to the third Monday in December, 1919, commanding and requiring the Honorable Richard W. Walker, circuit judge, presiding in the Fifth Circuit of the United States, at New Orleans, to allow the appeal as prayed for in the said petition for appeal, or on failure to allow

said appeal to show cause on said return date why he should not have allowed it.

SOL E. GORDON,
A. D. LIPSCOMB,
Attorneys for Petitioners Above Named.

Beaumont, Texas, November 20, 1919.

The State of Texas, County of Jefferson—ss.

Before the undersigned notary public, this day appeared A. D. Lipscomb, who being duly sworn, on oath says the facts set forth in the foregoing petition are within his knowledge truly and correctly stated.

A. D. Lipscomb

Sworn to and subscribed before me, this 20th day of November, 1919.

.....

Notary Public in and for Jefferson County, Texas.

EXHIBIT "A."

Number 3325.
In the Circuit Court of Appeals of the United States, at New Orleans.
Fifth Circuit.
WALTER J. CRAWFORD, Trustee, *Appellant*,
vs.
J. E. BROUSSARD ET AL., *Appellees*.

Petition for Appeal.

To the Honorable Judges of Said Court:

The above mentioned appellees, viz., J. E. Broussard, Beaumont Rice Mills, J. M. Hebert, B. C. Hebert, J. A. Bordages, Sarah Hamshire, Marian Hamshire, Lelemarie Hamshire, M. S. Hamshire, Asa Hamshire, Marie Hamshire, Eunice Arceneaux, Irene Hancock, R. H. Hancock, Paul Blevins and Rose Mary Blevins, minors, herein acting by and through their next friend, J. E. Broussard, and Lena Broussard and J. Perry Broussard, feeling themselves aggrieved by the decree rendered in this cause by the majority of this Circuit Court of Appeals and by the order denying their petition for rehearing entered in the above entitled cause on the 7th day of October, 1919, do hereby appeal from said decree and order to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith.

And these petitioners pray that their appeal be allowed and that citation be issued as provided

by law, and that a transcript of the record, proceedings and documents upon which said decree and order were based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of such Court in such cases made and provided.

And your petitioners further pray that the proper order relating to the security to be required of them be made.

Respectfully,

SOL E. GORDON,
A. D. LIPSCOMB,
Attys. for Appellees.

EXHIBIT "B."

Number 3325.
In the United States Circuit Court of Appeals
at New Orleans.
Fifth Circuit.
WALTER J. CRAWFORD, Trustee, *Appellant*,
vs.
J. E. BROUSSARD ET AL., *Appellees*.

Assignment of Errors.

Now come the appellees in the above entitled cause and file the following Assignment of Errors upon which they will rely in the prosecution of their appeal in this cause from the decree herein made by this Honorable Court and the order overruling and denying their Petition for Rehearing, made in accordance with supplemental opinion filed October 7th, 1919.

I.

The majority decision of the Circuit Court of Appeals is erroneous in reversing the trial court's finding of a valid transfer from the bankrupts to Beaumont Rice Mills, for it is clear from the uncontradicted evidence and findings of the trial judge that the transfer was made when no one contemplated bankruptcy or insolvency and while the crop transferred was merely a growing crop, and that the transfer was made at a price which was then fair and plainly adequate price for it.

II.

The majority decision of the Circuit Court of Appeals is erroneous in holding that admittedly valid liens of Beaumont Rice Mills to an amount about equal to the value of the crop in question were lost by the transfer of the crop which was made by the bankrupts to the Beaumont Rice Mills, the true rule being that where a creditor takes a transfer of his debtor's property in satisfaction of debts any invalidity in the transfer affects only the debtor's equity of redemption and does not penalize the creditor by forfeiture of the rights vested in him by virtue of his pre-existing liens.

III.

The majority decision of the Circuit Court of Appeals errs in treating the subsequent voluntary bankruptcy of the debtors as an evidence of intent to delay, hinder or defraud creditors in making transfer of the McCrimmin crop to Beaumont Rice Mills, because the uncontradicted evidence shows that the subsequent bankruptcy was forced upon the debtors by a wrecking process of the creditors that was wholly unexpected and that at the time of the transfer the debtors had no such thing as bankruptcy in contemplation but had every reason to believe their remaining crops, when matured, and other assets would be greater in value than their debts, and that their diligent efforts to increase their assets would induce all reasonable creditors to forbear forced collection until their crops should be matured and saved.

IV.

The majority decision of the Circuit Court of Appeals is erroneous in holding that the transfer of the McCrimmin crop to Beaumont Rice Mills was void as to creditors because it does not appear either from the pleadings or evidence that, at the time of the transfer, the remaining assets of the debtors were insufficient to satisfy all creditors.

V.

The majority of the Circuit Court of Appeals err in holding that while a valid transfer binding on appellees was made in June, 1906, yet same was void as to creditors, because such finding is not justified by any assignment of error in appellants' brief—the first (page 55) *urging that there was never any sale* to Beaumont Rice Mills by Moore & Bridgman, but that the crop remained the property of Moore & Bridgman at the time of the bankruptcy; the second (page 83) urging that the sale was void as a preference, and the others urging limitations, *res adjudicata* and questions of procedure; while the facts show an actual sale in June, wherein the consideration was release of a debt secured by lien on the crop and other property and amounting to a sum *which certainly does not appear to have any less than the value the crop then had.*

VI.

The majority of the Circuit Court of Appeals err in holding that either the facts of this case or pleadings authorize a conclusion that the contracts of Moore & Bridgman with appellees were in-

tended in fraud of creditors, since pleadings and undisputed evidence show that *every act done by the debtors up to the time of bankruptcy was clearly intended for the benefit of their estate.*

VII.

The majority of the Circuit Court of Appeals err in holding that the transfer of the McCrimmin crop to Beaumont Rice Mills was void as being made to hinder, delay or defraud creditors, because the whole course of conduct of all the parties affirmatively appears in pleadings and evidence to have been such, up to the time the debtors were driven into bankruptcy, *as to reasonably indicate to appellees a purpose to improve the debtors' estate by every act done, including the sale.*

VIII.

The majority opinion of the Circuit Court of Appeals erroneously states the pleadings of Beaumont Rice Mills in numerous particulars pointed out in subdivision VI of their petition for rehearing, with convenient references to the record.

IX.

The majority opinion of the Circuit Court of Appeals erroneously recites the evidence as pointed out in subdivision VII of the Beaumont Rice Mills' petition for rehearing, with convenient references to the record.

X.

The majority of the Circuit Court of Appeals have committed the error of indulging presumptions against the justice and verity of the Trial

Court's findings and conclusions, while the opposite practice is the correct one.

XI.

The majority opinion of the Circuit Court of Appeals is erroneous in assuming that any pleading of "*bona fides* and fair value" was necessary on the plaintiffs' part in the absence of a pleading on defendants' part of "sale in fraud of creditors," the defendants standing solely on allegations that there was *no sale at all.*

XII.

The majority of the Circuit Court of Appeals have erred in their opinion and decision in this cause, in this, that it is at variance with the pleadings of the trustee in bankruptcy whose case, as pleaded, is merely a denial of the transfer asserted by appellees, and pleas of *res adjudicata* and limitation, whereas the majority opinion admits the transfer and does not uphold such pleas in bar.

XIII.

If the opinion or decision of the majority of the Circuit Court of Appeals can be construed as sustaining any plea of limitations the same is erroneous because by the laws of the United States, governing suits against Trustees in Bankruptcy involving title to property, prosecuted by persons claiming adversely to the estate no statute of limitations begins to operate until after the discharge of the trustee in bankruptcy, and all claims asserted by the plaintiffs were adverse to the estate and not claims sought to be proved in bankruptcy.

XIV.

The majority opinion of the Circuit Court of Appeals shows that said majority has considered this case from the standpoint of a tribunal for administration of bankrupt estates rather than from the standpoint of a court of legal justice, and its action is therefore in violation of the Fifth Amendment of the Constitution of the United States and contrary to the spirit and purpose of Section 23a of the Bankruptcy act, denying the right to such control over the remedial rights of strangers to the bankruptcy proceeding. And this cause of complaint with the decision besides being manifest in the general spirit of the majority opinion, is especially manifest in the following particulars, viz:—

(a) There were no pleadings authorizing the decision herein rendered by the Circuit Court of Appeals annulling a transfer conceded in the opinion to have been made.

(b) The decision of the Circuit Court of Appeals attempts to enforce against plaintiffs a penalty that is not authorized by any law, such penalty consisting in the forfeiture of lien rights conceded by the opinion to exist and concerning the validity of which no reasonable question could arise under the Bankruptcy Law.

Respectfully,

SOL E. GORDON,

A. D. LIPSCOMB,

Attorneys for Appellees.

A. D. LIPSCOMB,
Beaumont, Texas.

EXHIBIT "C."

Number 3325

In the United States Circuit Court of Appeals at New Orleans.

Fifth Circuit.

J. E. BROUSSARD ET AL., *Appellees.*

vs.

WALTER J. CRAWFORD, Trustee, *Appellant,*

Additional Assignment of Errors.

Now comes the appellees in the above styled cause and file the following additional Assignment of Errors in connection with their petition for appeal, to-wit:

XV.

The Circuit Court of Appeals errs in its ruling on the petition for rehearing in assuming that plaintiffs' bills as amended showed insolvency of the debtors at the time of the transfer.

XVI.

The Circuit Court of Appeals errs in its opinion on petition for rehearing in declaring that the evidence shows insolvency of the debtors at the time of their agreement for transfer to Beaumont Rice Mills.

XVII.

The Circuit Court of Appeals errs in its ruling on motion for rehearing in asserting that it was not alleged or proved that what the creditor parted with was approximately equivalent to what it acquired.

XVIII.

In its tabulation and comparison of cost and value as embraced in its opinion on petition for rehearing the Circuit Court of Appeals understates the cost to appellees of the crop in the following particulars, to-wit:

(1) The two mortgages to appellees provided for eight per cent interest instead of six as stated. (Tr. pp. 83 and 85.)

(2) The amount of advances, expense of harvesting and rent are understated by the Circuit Court of Appeals in the amount of $422.46, as shown by comparison with the findings of the trial court. (Tr. p. 73.)

(3) The Circuit Court of Appeals should have allowed some interest on said advances. And said opinion overstates the value of the crop in this that whereas the crop only brought $11,651.25, six or more months after Appellees agreed to purchase it, and its value at the time it was purchased in June can be ascertained from the sale price only by discounting the sale price correspondingly, yet the Circuit Court of Appeals takes such sale price as the criterion of value as a growing crop without deduction. Moreover its value in June must be further discounted under the undisputed evidence showing that it yielded better and brought a better price than was expected.

XIX.

The Circuit Court of Appeals has erred in dealing with this case as a proceeding in bankruptcy and applying to it those presumptions favorable to the trustee's claims and favorable to prompt

and expeditious administration, whereas the plaintiffs, prosecuting a separate suit, asserting a claim alike adverse to the bankrupts and the trustee, were entitled to a fair opportunity for a hearing unprejudiced by presumptions against them

Respectfully,

SOL E. GORDON,

A. D. LIPSCOMB,

Attorneys for Appellees.

A. D. LIPSCOMB, Beaumont, Texas.

EXHIBIT "D."

UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT

Richard W. Walker,
U. S. Circuit Judge.
Fort Worth, Texas, Nov. 6th, 1919.

A. D. Lipscomb, Esq.,
Perlstein Bldg.,
Beaumont, Texas.

Dear Sir:

I have your letter of the 3d inst., enclosing the papers mentioned in the case of *Crawford*, Trustee, *versus Broussard*, No. 3325.

My examination of the question raised by your application for the allowance of an appeal has resulted in the conclusion that the case is not one which the existing law permits to be appealed to the Supreme Court from the Circuit Court of Appeals. It follows that I must decline to allow the appeal prayed for. I return herewith the appeal papers you sent me.

Very truly yours,

RWW/AFH. R. W. WALKER.
Enc.

St. Paul, Minn. State Library,

No. ——

In the

Supreme Court of the United States

BRIEF AND ARGUMENT ON THE PETITION OF BROUSSARD AND OTHERS FOR MANDAMUS

In the Case of

WALTER J. CRAWFORD, *Appellant*,

vs.

J. Z. BROUSSARD ET AL, *Appellees*.

In the Circuit Court of Appeals, Fifth Circuit

SOL E. GORDON,
A. D. LITSCOMB.

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In the

Supreme Court of the United States

BRIEF AND ARGUMENT ON THE PETITION OF BROUSSARD AND OTHERS FOR MANDAMUS

In the Case of

WALTER J. CRAWFORD, *Appellant*,

vs.

J. E. BROUSSARD ET AL., *Appellees*.

} *In the Circuit Court of Appeals, Fifth Circuit.*

No. ——.

BRIEF OF THE ARGUMENT.

(1) This, being a "suit in equity," as distinguished from an intervention in bankruptcy proceedings, and being brought by strangers to

the bankruptcy proceedings as a separate suit with prayer for subpoena and not founded on nor defended under any provision of the bankruptcy law, cannot be classed either as a "proceeding or cause arising under the bankruptcy act" or as "a controversy arising in such proceedings or cause," but must be governed by the rules applicable to "controversies *at law or in equity*, as *distinguished* from *proceedings in bankruptcy*," which Section 23a of the Bankruptcy Act (except in three special kinds of cases), excludes from the jurisdiction of the District Court as a court of bankruptcy and refers to the jurisdiction of the District Court under the general law, when it has jurisdiction at all.

(2) The U. S. District Court does not take jurisdiction of this case exclusive of the state courts, simply because it is a court of bankruptcy having custody (*Murphy* v. *Jno. Hoffman Co.*, *infra*), nor because it is a Federal court having custody (Wabash College Case), but because of the general rule of law as to the jurisdiction of courts, to the effect that, as between two courts of *competent concurrent* jurisdiction over the subject matter, the one having custody of the property will exclude the other in any controversy as to title to that property.

(3) The rule is one relating to courts of *competent concurrent jurisdiction* over the subject matter and does not exclude the jurisdiction of a court of competent jurisdiction to try title when the property is in the hands of a court having no such jurisdiction (*Byers* v. *McAuley*, *infra*), and it follows that it cannot apply so as to empower any court to extend its jurisdiction, or the finality

of its jurisdiction, to new subject matter by merely taking custody.

(4) While this case is such that it might have been made a "controversy arising in bankruptcy proceedings," by intervention therein such as necessarily to delay settlement of the estate, yet it follows from Ss. 11d and 23a of the Bankruptcy Act that the plaintiffs had the right to institute it as a separate suit, such as not necessarily to delay the final settlement, and they did so institute it

(5) While the trustee could, at any time after the adverse claim became known to him, have instituted proceedings under the Bankruptcy Act (Sections 60b, 67e or 70e), to recover this property, thus delaying the administration with the claim and subjecting it to the more or less summary and limited methods of procedure and appeal applicable to the bankruptcy court, yet he would have been compelled in such case to admit the validity of the sale as between the parties by pleading in confession and avoidance; and he has never been willing to make such a plea, not even when sued by these plaintiffs, but has stood upon his denial of any contract of transfer having been made.

(6) To treat this as a suit in equity, separate from the bankruptcy proceedings, is conformable to the general rules of law as to jurisdiction; harmonizes with the spirit of S. 23a of the Bankruptcy Act; harmonizes with the constitution which protects strangers against summary divestiture of title to property through ministerial agencies of the government; harmonizes with S. 11d of the

Bankruptcy Act, which contemplates suits against trustees separate from the bankruptcy proceedings, and gives all the force and operation that can reasonably be demanded to the common law rule under which the U. S. District Court takes exclusive jurisdiction in this case.

(7) This being a suit in equity, separate and distinct from the bankruptcy proceedings, and not necessarily impeding them, the appellate jurisdiction is not controlled by the amendments of 1915 and 1916 but is controlled by Sections 241 and 128 of the Judiciary Act which clearly gives this court appellate jurisdiction, since it neither depends upon diversity of citizenship nor other exception named in S. 128, but is brought in the U. S. District Court because of the fact of custody and because the constitution and laws of the United States and the directions of a decree of this court are involved. (*Florida Etc. R. R. Co.* v. *Bell*, 176 U. S. 325.)

(8) Even if the Circuit Court of Appeals jurisdiction were otherwise final, the fact that said court originated questions which were not raised in the trial court by the pleadings, nor considered by the trial court, and whereon its rulings, as stated in the majority opinion, operate a divestiture of plaintiff's title without due process of law, gives this court appellate jurisdiction as was exercised in the case of *Lutcher & Moore Lumber Company* v. *Knight*, 217 U. S. 267, to review a decision of the Circuit Court of Appeals in a case in which its decision was otherwise final.

Jurisdictional Facts.

The jurisdictional facts are sufficiently stated in the petition for mandamus. This court will take judicial cognizance of the proceedings had in this court in the case of *Hebert* v. *Crawford*, which was No. 83 at the October term, 1912, between the same parties and affecting the same property, reported in Vol. 228, U. S. Sup. Ct. Reports, p. 208.

I.

This is a separate suit in equity as distinguished from an intervention in bankruptcy proceedings.

The bankruptcy law recognizes three sorts of proceedings with which the officers of bankruptcy courts may be concerned, viz.:

(1) Proceedings and causes arising under the Bankruptcy Act, S. 25b 1 and 2 of the Bankruptcy Act; Acts of 1915 and 1916 relating to the final jurisdiction of the C. C. A., 39 Stat. L. 727; 38 Stat. L. 803.

(2) Controversies arising in bankruptcy proceedings and causes. S. 24a of the Bankruptcy Act. Acts of 1915 and 1916, 38 St. L. 803; 39 St. L. 727.

(3) "Controversies at law and in equity, *as distinguished from proceedings in bankruptcy*, between trustees and adverse claimants." S. 23a Bankruptcy Act.

The last named kind are triable in state courts and in Federal courts of concurrent jurisdiction; and Federal courts cannot take jurisdiction of

them except where they could if the controversy was between the bankrupt and the adverse claimant, unless by consent of the adverse claimant, or unless the suit was by the trustee under S. 60b, 67e or 70e, S. 23a and b of the Bankruptcy Act.

The amendments of 1915 and 1916 clearly cut out the appellate jurisdiction of the Supreme Court in respect of the first two classes. Acts of Sept. 6, 1916, 39 Stat. L. 727; and S. 6 of the Act of January 28, 1915, 38 Stat. L. 803.

We apprehend that if it had been the intention to cut off the jurisdiction of the Supreme Court as to the third class—suits at law and in equity—the intention would have been made clear. Sutherland on Stat. Construction S. 396; 36 Cyc. 1188.

But it could not have been intended to cut out the jurisdiction as to the third class because that includes controversies of all the ordinary kinds over which the bankruptcy court has no jurisdiction as such unless obtained by obtaining custody. That would have been to invade by implication the ordinary field of this court's jurisdiction, whereas the purpose was merely to cut off those controversies which arise out of the existence of a bankruptcy law. There was evidently no purpose to repeal S. 23a by implication.

The present case is not based upon any provision of the bankruptcy law and it is not an intervention in the bankruptcy proceedings, such as necessarily to delay them, but it is a separate suit, such as under the provisions of the bankruptcy law could have been brought in the U. S. District

Court at any time within two years *after the close of the bankruptcy*. S. 11d Bankruptcy Act.

If it had been such a case as the Circuit Court of Appeals holds it to be it was the duty of the trustee to proceed under Section 67 of the bankruptcy law, pleading in confession and avoidance, and promptly settle the matter. *Staats* v. *Sec. Trust Co.*, 243 U. S. 122.

The U. S. District Court had jurisdiction in this case not by reason of the bankruptcy law, but by reason of the fact that it was a court of competent jurisdiction concurrent with the state courts and had custody.

Murphy v. *Jno. Hofmann Co.*, 211 U. S. 568-9.
Hebert v. *Crawford*, 228 U. S. 208.

The fact of the U. S. District Court's jurisdiction by reason of custody should not therefore result in forcing such a construction on the suit instituted by the petitioners as to require that it be considered a "controversy arising in bankruptcy proceedings," so as to cut off their right of appeal by bringing them under the amendments of 1915 and 1916. *First N. Bank* v. *Chicago Title & Trust Co.*, 198 U. S. ~~1055~~ 241

One was participating in a "proceeding or cause" arising under the bankruptcy law when he appeared "in the bankruptcy court, recognizing the *title* and right of possession of the trustee in bankruptcy and asserted his claim" (*Coder* v. *Arts*, 213 U. S. 235), and, under the law as it stood prior to 1915, such a cause or proceeding could

be taken to the Supreme Court on appeal under Section 25 b-1, *Coder* v. *Arts*, 213 U. S. 238.

One had "a controversy arising in bankruptcy proceedings" when he "intervened in the bankruptcy proceedings for the purpose of asserting an independent and superior title to the property held by the trustee" (*Coder* v. *Arts*, 213 U. S. 235, or where the trustee sued under S. 67e or 67b. *Staats* v. *Sec. Trust & Savings Bank*, 243 U. S. 122), and such a case, prior to the amendments of 1915 and 1916 was appealable to the Supreme Court under the provisions of Section 24 of the Bankruptcy Act, taken in connection with provision of Sections 241 and 128 of the judicial code. *Hewit* v. *Berlin Machine Works*, 194 U. S. 296.

Under Section 23a, it is clear that suits or controversies "at law and in equity" (except those which are instituted in the bankruptcy proceedings with the consent of the adverse claimant, as by his voluntary intervention, or by the trustee under Sections 60b, 67e or 70e), may be brought by or against trustees in bankruptcy either in the state courts or bankruptcy court, but in the latter court only when it could have been brought there if brought by or against the bankrupt himself, and that such a case would still be governed by Sections 241 and 128 and is not within the Acts of 1915 and 1916.

The District Court of the United States has a jurisdiction of this case, concurrent with the state courts ~~or bankruptcy court, but in the lat-~~ under allegations of plaintiffs petition, because it involves the construction and application of the Constitution of the United

States, etc. (*Buffet* v. *Clark-Montana Co.*, U. S. Sup. Ct. Adv. Ops., 1919, p. 297), and it has exclusive jurisdiction because, being under the general law a court of competent jurisdiction, it also has custody of the property. *Wabash R. R.* v. *Adelbert College*, 208 U. S. 54.

To refer the exclusive jurisdiction of the Federal District Court in this case to its general concurrent jurisdiction and custody, rather than to its jurisdiction strictly as a bankruptcy court, is to preserve to the adverse claimant, as contemplated by Section 23a, all the remedial rights and choice of procedure that is not cut off by the fact of custody. *Bardes* v. *Bank*, 178 U. S. 535-6.

If the law has not forced them in as participants in the bankruptcy proceedings, clearly the plaintiffs have not consented to go in to them. They filed a separate suit, separately numbered and subpoena being prayed for.

That such separate suits can be filed in the District Courts is recognized by the authorities (Loveland, Ss. 534 and 411), and implied in the provisions of Sections 23a and 11d, the latter recognizing the right to sue the trustee at any time within two years after closing the estate.

The trustee could, at any time, have begun a suit against plaintiffs under Sections 60b, 67e and 70e, and in that case he would have had a cause arising under the bankruptcy law, but he would have had to admit the validity of the transactions as between the parties (*Staatts* v. *Sec. Trust Co.*, 243 U. S. 122), but his defense adhered to throughout, is that no such transactions were

had at all. See his pleadings quoted in full above in this respect.

The allegations in plaintiff's petition control as to the jurisdiction of the trial court and also as to the jurisdiction of the appellate court. *Flanders* v. *Coleman*, U. S. Sup. Ct. Adv. Ops., June 2, 1919, p. 596; *Butler* v. *Clark-Montana Co.*, Id. p. 297. But if the pleadings of defendant Crawford could oust appellate jurisdiction, he has not pleaded anything to have that effect. He has made no plea of confession and avoidance, nor made any reference to Sections 60b, 67e or 70e, nor did plaintiffs allege that the trustee claimed under either of those sections, but they alleged their claims as resting upon contracts with the debtors originating in a manner most favored in equity, and much more than four months prior to bankruptcy, and showed that the trustee denied that such contracts were ever made and that he insisted on holding the property absolutely under proceedings in which plaintiffs had not been parties.

The principles of intervention are instructively discussed in the case of *Gratiot County State Bank* v. *Johnson*, U. S. Sup. Ct. Adv. Ops., March 17, 1919, p. 317, though not the same kind of case as this. Dealing with the right to intervene given by certain sections of the Bankruptcy Act, the court says:

> "The sections are permissive, not mandatory. They give to a creditor * * * the right to contest * * * But he is under no obligations to intervene. * * * Unless he

exercises the right to become a party, he remains a stranger to the litigation. * * * The rule is universal that persons who might have made themselves parties to a litigation between strangers, but did not, are not bound. * * * No good reason exists for making an exception in bankruptcy proceedings."

II.

The exclusiveness of the United States District Court's jurisdiction in this case does not rest upon statute, but upon a general law.

When a trustee in bankruptcy asserts title on the part of the estate to property which is really owned by a stranger to the bankruptcy proceedings, a choice of remedies remains open to such owner, viz:

(1) He can either intervene *in the bankruptcy proceedings*, in which event the adversary claims will be dealt with as a "controversy arising in" and as part of the "proceedings in bankruptcy," which cannot be closed until such intervention shall be disposed of; or

(2) He can *bring his separate suit*, in which event the administration of the estate proceeds independently, and is not necessarily delayed by him, and his right to assert his claim is not cut off by the winding up of the estate. The only limitation as to the time for such suit is that he must begin it before the winding up of the estate, *or within two years thereafter*. Section 11d, Bankruptcy Act.

If such adverse claimant elects to bring a *separate suit*, the question remains as to what jurisdiction he shall proceed in. Naturally, the owner of a piece of property would not prefer to submit any question of his title to a purely administrative tribunal which had already, by taking possession of it in the court of administration of another person's estate, prejudged the question of title, and a national government which recognizes the importance of the individual does not force him into that position.

In order to establish the principle of legal justice that is here referred to, the Fifth Amendment provides that "no person shall be deprived of property but by due process of law," i. e., after a fair hearing in a court of complete jurisdiction to try causes between parties, as distinguished from an administrative tribunal. In the same spirit and to the same purpose the Bankruptcy Act, Section 23, more specifically provides that the United States Circuit Courts (since made to read "District Courts" by Section 291 of the Judicial Code) "shall have jurisdiction at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants." Subdivision b of the section excepts "suits by the trustee under Sections 60b, 67e and 70e," but there is no exception under the bankruptcy law as to suits against the trustee.

They go into the Federal court by reason only of rules and provisions of the general law, among which is that relating to jurisdiction of courts—giving (as between two courts of competent concurrent jurisdiction) exclusive jurisdiction to the one having custody.

The exclusiveness of its jurisdiction would rest not on the provisions of any special statute, but upon that general principle of law relating to jurisdiction of courts which draws into one court, having a competent jurisdiction to try titles, jurisdiction to try all questions of title to property in its actual custody. *Murphy* v. *Jno. Hoffman Co.*, *infra*.

The principle is thus characterized by the Supreme Court in *Wabash R. R.* v. *Adelbert College*, 208 U. S. 54:

> "Those principles are of general application and not peculiar to the relations of the courts of the United States to the courts of the states."

Such a case was in the mind of the Supreme Court when they said in *Murphy* v. *Jno. Hoffman Co.*, 211 U. S. 568:

> "The Bankrupt Act * * * did not confer jurisdiction on the district courts over suits brought by trustees * * * to assert title * * * unless by consent. * * * The act, however, preserves the jurisdiction otherwise existing by statute. * * * But where the property * * * is in the actual possession of the court * * * there comes into play another principle, not peculiar to courts of bankruptcy. * * *

> When the court of bankruptcy, through the act of its officers, such as referees, receivers or trustees, has taken possession of a *res*, as the property of a bankrupt, it has ancillary jurisdiction to determine the adverse claims of strangers to it, and its possession cannot be disturbed by the process of another court."

The principle is thus stated in *Murphy* v. *Jno. Hoffman Co.*, 211 U. S. 569:

> "This ancillary jurisdiction may be exercised, though it is not authorized by any statute. The jurisdiction in such cases arises out of the possession of the property. * * *"

III.

The fact of custody by any tribunal does not of itself extend the jurisdiction of the court of custody to new subject matter, but only has the effect of making it exclusive where it was previously competent and concurrent with courts of excluded jurisdiction.

The courts to which ancillary jurisdiction is drawn are, to use the language of the same case, 211 U. S. 569, "courts of competent jurisdiction." See also 11 Cyc. 1010. For the custody of a purely administrative tribunal would not draw to it as such any exclusive jurisdiction to try title. And the custody of a court of jurisdiction strictly limited as to subject matter is not extended outside of such limits merely by custody. For this rule relating to courts of concurrent jurisdiction to operate the court of custody must be a court which, independently, has "jurisdiction of the class of

cases to which the particular case belongs." 15 C. J. 729. Therefore, a Federal Court will try a question of title to property in the hands of an administrator in the probate court of a state. *Byers* v. *McAuley*, 149 U. S. 620.

District courts, as courts of bankruptcy, have no general jurisdiction of title to property, but they only have jurisdiction of special kinds of trials of title of a very limited description as defined by sections 2 and 23 of the Act, viz.: suits by the trustee to recover property under sections 60b, 67e, and 70e, (S. 2 Cl. 7 as limited by *Bardes* v. *Bank*, 178 U. S. 535 and Ss. 23a and b as amended in 1903-1910), and suits against the bankrupt or his agents in possession, *Whitney* v. *Wenman*, 198 U. S. 552; and these powers they exercise not so much like courts of justice as like administrative tribunals. The bankruptcy court, as such, cannot by taking custody "create a jurisdiction that is forbidden by statute" *First N. Bk.* v. *Chi. Title & Tr. Co.*, 198 U. S. 1055.[24] But the Federal Districts Courts, under the general law, have a complete and unlimited jurisdiction to try title in all those cases where the parties or subject matter are of the kind which they were created to pass upon. When such circumstance of the possession of property compels a stranger to go into the Federal District Court it is contemplated that he will be treated, not like an intermeddler impeding an administration, but like he would be in the courts of his own state if the circumstance of custody had not deprived him of resort to them.

That is what the Supreme Court has in mind when saying in Wabash R. R. case, 208 U. S. 57:

> "The defendants in error must pursue their remedy in that court" (the Federal trial court), "which doubtless will consider the decisions of the state courts on questions of state law with the respect which the decisions of this court require."

Jurisdiction is determined under the allegations of the plaintiff's petition, (*Elliott* v. *Toeppner*, 187 U. S. 332; *Butler Etc. Co.* v. *Clark-Montana Co.*, Adv. Op. U. S. Sup. Ct., October term, 1918, 297) said by that test plaintiff's cause of action did not arise under the bankruptcy law, but by reason of contracts which the allegations showed were to be tested by the state law. In respect of the liens asserted by plaintiffs they rested upon contracts made before the property had any existence as an asset, and long prior to the four months period preceding bankruptcy. (*Jaquith* v. *Rowley*, 188 U. S. 620.)

That the advantage to the actual owner of adversely held property of having an ordinary judicial trial of title, over the speedy and less deliberative methods of adjudication obtaining in an administrative tribunal acting as such, is important, may be gathered from the fact that it is the duty of administrative tribunals to proceed expeditiously with the matter in hand, making the best and most prompt possible outcome for the creditors; while the great function of judicial tribunals is to give correct application to rules of law in controversies between parties, so that citizens may have confidence in the security of their rights and

assurance of "a fair opportunity to be heard" when they complain of any injustice or oppression.

In the bankruptcy proceedings "prompt adjudication," to use the language of this court in *Gratiot State Bank* v. *Johnson, supra*, is the aim of the bankruptcy law, and "*such expedition in proceedings would be impossible if each of the many widely scattered creditors is to be afforded a fair opportunity to be heard.*"

Of course it is not necessary for such creditors as the court refers to in that case to have a fair hearing because they are not bound, unless they voluntarily intervene; but when the proceedings is such as to be binding on one and is the only kind of proceedings open to him in view of the custody, he is certainly entitled to a judicial hearing, and should have "a fair opportunity to be heard," though it result in great delay, if he does not go voluntarily into those essentially "prompt" and "expeditious" proceedings for the assertion of his claim.

Concurrency of jurisdiction only exists in those cases where both courts independently of custody, are "vested with appropriate jurisdiction suitable to the nature of the case." *Claflin* v. *Hausman*, 93 U. S. 130; 11 Cyc. 996. "Statutes extending the right of appeal are remedial and should be liberally construed * * * and statutes which take away, change or diminish fundamental rights * * and statutes which provide new and extraordinary remedies must be construed strictly, both as to the cases embraced within their terms and as to the methods to be pursued." 36 Cyc. 1188.

It seems to follow that the fact of custody does not of itself make this case such a part of the bankruptcy proceedings as to render the jurisdiction of the Circuit Court of Appeals final under the amendments of 1915 and 1916.

IV.

Plaintiffs had a right, which they exercised, to make this a separate suit from the bankruptcy proceeding.

The case at bar is one in which the plaintiffs sued in the District Court of the United States as a court of general jurisdiction, in a separate plenary suit, as strangers to the bankruptcy proceedings, and not by way of intervention in the bankruptcy proceedings; the case took its regular position in due order of numbers on the equity docket and subpoena was prayed for and issued as in ordinary cases in equity.

It is implied in S. 11d that a stranger to the bankruptcy proceedings can bring a separate suit against the trustee for injury done him, and that such suit may even be brought after the estate is closed. That clause reads:

> "Suits shall not be brought by or against a trustee or a Bankrupt Estate subsequent to two years after the estate has been closed."

Loveland, while recognizing that an intervention, asserting an adverse claim of title, may be prosecuted "in the bankruptcy proceedings" in

which case it will be "a controversy arising in bankruptcy proceedings," (S. 829 p. 1452), says that an independent suit also may be brought in the Federal court, his language (S. 534 p. 1038), being as follows:

> "An independent suit may be brought in a court of bankruptcy irrespective of citizenship or amount in dispute to enforce a claim against property in custody of the court. Such a suit may be maintained on the theory that it is ancillary to the bankruptcy proceedings."

An intervention in the bankruptcy proceedings is described by Loveland (S. 411) as follows:

> "An intervening petition should be entitled in the District Court and bankruptcy proceedings. It may be as follows: "The District Court of the United States for the ————District. In Re A. B., Bankrupt."

The case at bar was separately styled, separately numbered and subpoena was prayed for the defendants. The statutes of limitation were pleaded by the defendant and overruled on the ground that *the suit was such a one as could have been filed at any time not less than two years after the bankruptcy was closed, under Section 11d of the Bankruptcy Act*, thus fully recognizing in the trial court the independent and separate nature of this suit.

V.

The trustee could have made the tactical sacrifice of admitting a transfer valid between the parties and pleading avoidance under Section 67e, in suit instituted by him, and thus have brought the case within the amendments of 1915 and 1916, but this he avoided; and in his answer in this case he did not so plead.

As pointed out in the petition for mandamus, the defendants made no plea in confession and avoidance, but stood upon pleas which put the plaintiffs to the full proof of their title.

The cases dealing with controversies arising in bankruptcy proceedings have been cases where the proceedings in question have been clearly in bankruptcy, and the controversy was presented in the course of and as part of the bankruptcy proceedings, rather than in the shape of a cause or proceeding additional to and separate from them; or, if it was separate, it was one brought by the trustee himself, admitting everything necessary to sustain the adverse claimant's title as against the bankrupt, but seeking to avoid it in behalf of creditors. *Stoats* v. *Security Trust Co.*, 243 U. S. 122.

VI.

The common law rule as to the exclusive jurisdiction of courts having custody is satisfied, without the necessity of running counter to other important principles, by requiring that such suits be confined to the United States District Court in the exercise of its general jurisdiction.

The amendment, in view of the constitutional jurisdiction of the Supreme Court, as above defined, could not have been aimed to create an exception of those cases in which the most fundamental questions of title arise between the trustee and strangers to the proceeding and which do not halt the administration, and in which neither party urges either of the sections mentioned in Section 23b. The reasonable limitation is that the amendment meant what the language fairly imports—"controversies arising *in the bankruptcy* proceedings"—not suits that are filed by strangers to the proceedings and tried separately with careful insistence upon preservation of all the adverse claimant's remedial rights, and leaving the administration to proceed separately. It applies to controversies as between two creditors, controversies between two or more intervening lien holders, controversies as between the trustee and some adverse claimant brought in either under the provisions of Sections 60b, 67e or 70e, or by his own consent as a defendant, or by his own voluntary intervention, and whose interference or participation necessarily begins before the estate is closed and keeps it open until finally disposed of.

VII

This being a suit in equity, and not an intervention in bankruptcy proceedings, the appellate jurisdiction is controlled by Section 241 and Section 128 of the Judiciary Act.

The Constitution, Article three, Section two, provides:

> "In all other cases before mentioned" (that is, in all to which Federal jurisdiction extends, except those in which its jurisdiction is original), "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make."

Section 241 of the Judiciary Act provides for the exception to be ascertained by reference to the final jurisdiction of the Circuit Court of Appeals as follows:

> "In any case in which the judgment or decree of the Circuit Court of Appeals is not made final by the provisions of this title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs." (36 Stat. L. 1157).

Section 128 of the Judicial Code makes the jurisdiction of the Circuit Court of Appeals final in a variety of cases, but it is clear that it is not by that section made final in those cases where the suit is prosecuted by one claiming as a

stranger and the plaintiff's cause of action is one against the bankrupt and arises under the laws of his state and is a property right claimed under general law and protected by the Constitution of the United States.

VIII.

Where the Circuit Court of Appeals originates a denial of a constitutional right, the Supreme Court has appellate jurisdiction notwithstanding the case as made up to that time is one over which the Circuit Court of Appeals' jurisdiction is final.

In this case the suit was brought in accordance with the opinion in the case of *Hebert* v. *Crawford*, 228 U. S. 208, relating to the same subject matter and parties, and fully recognizing the right of plaintiffs to prosecute this suit.

Plaintiffs, by their original bill as amended, showed they had caused the crop to be grown to create a special fund for payment of their debt, already partly secured. They showed in their pleading that on January 1st, 1906, and when they made the arrangement in January, 1906, for its cultivation, the debtors owed them $6117.03 bearing interest from January 1, 1906. That in order to make and save the crop they advanced $5209.45 additional, beginning in April, 1906; that in June, 1906, while the crop was growing in the field they agreed to take it over for the debt, advances and interest; that afterward in the winter, when the crop had been harvested they sold it for less than these sums of indebtedness. (Those were the

only allegations or proof as to its value. The mortgages to plaintiffs bore interest at eight per cent. The crop was not completely delivered to plaintiffs until after December 10, 1906. It yielded better and sold for a better price than was expected, and no one contemplated bankruptcy at the time of its purchase. Such was the undisputed evidence.)

To the pleadings above recited the defendant made no answer in confession and avoidance.

The plaintiffs discharged the burden of proof as to the transfer under the circumstances alleged, the only difference being that the indebtedness as pleaded was reduced by a credit of $750.60 and the trial court found that such transfer was agreed upon and not only valid but highly equitable and upheld the plaintiffs' claims throughout.

The Circuit Court of Appeals treated the case as if the defendant had pleaded or the plaintiffs admitted a transfer to the plaintiffs rendered void as to creditors by S. 67e, and held it to be so.

While the actual order entered in the Circuit Court of Appeals was an order of dismissal yet it is clear from the opinion that what that court did was to annul the transfer to plaintiffs, although they conceded it to be valid as between the parties to it. This was done in behalf of a trustee who had no pleadings to sustain the action of the court.

The majority in the Circuit Court of Appeals, in their opinion, treated the case as if the *pleadings of plaintiffs* constituted an admission that

the purchase had been made at an inadequate price with knowledge of insolvency and they held the sale to plaintiffs was in fraud of creditors.

Enough of plaintiffs' allegations are above stated to show that they could not be construed as admitting purchase at an inadequate price nor notice of intent to defraud.

In their opinion on the petition for rehearing, the court said:

> "But whether the petition * * * * is or is not to be regarded as showing that Moore was insolvent when he made the alleged sale, the *evidence in the case* shows that he was insolvent."

In their opinion on the petition for rehearing, in determining the adequacy of the price they took *the evidence*, where it was better for the defendants' side of the case *than the pleadings*. Thus they took the original debt of plaintiff at $5426.43 as proven, rather than $6117.03 as alleged.

Therefore we are justified in saying that they did not found their judgment on plaintiffs' pleadings.

They founded it on what they conceived to be *evidence* of purchase at an inadequate price with knowledge of insolvency, *and there was no pleading to justify such a judgment.*

The case of *Lutcher & Moore Lumber Company* v. *Knight*, 217 U. S. 267, was one of Federal jurisdiction depending on diverse citizenship, and therefore within its final jurisdiction, in which

the Circuit Court of Appeals took a similar action. In that case this court said:

> "The effect of the action of the Circuit Court of Appeals was substantially to deny to the plaintiffs in error in that court, petitioners here, their day in court; in other words, was equivalent to condemning them without affording them an opportunity to be heard."

In such case, *Castle* v. *Persons*, 54 C. C. A. 141, Justice Sanborn said:

> "The defense * * sustained at the trial, was a confession and avoidance which had not been pleaded * * an admission that Thomas did direct the defendant to pay the $5,000 to Maria, and that the defendant did agree to do so, coupled with an averment, not found in the pleadings, that this contract was void because it was made in contemplation of the immediate death of Thomas Persons * * This defense was inconsistent with the denial in the answer, was not made by the defendant in the action, and it formed no substantial basis for a judgment.
>
> That due process of law without which parties may not be deprived of their property gives to them an opportunity to be heard respecting the justice of the judgment sought. It gives notice of the issue to be determined before it is tried. One may not bring suit upon one cause of action and recover upon another, nor may he go to trial upon one defense and sustain a judgment in his favor upon another and inconsistent defense."

It would not be possible for Congress to take away from the people the right of resort to the Supreme Court's jurisdiction over such constitutional questions as these which arise for the first time in the Circuit Court of Appeals. To say that the Supreme Court could still exercise jurisdiction by certiorari is no answer to this argument because the power to issue certiorari is merely a discretionary power of the court and gives no right to a citizen as such, whereas the constitutional limitations contained in such passages as the 5th Amendment were clearly privileges conferred on the individual as such, and demanding in his behalf, a right on his part to the remedies requisite for enforcement.

To say the least, there could be no limitation of this remedial right arising from implication. It would have to be by clear express exception. Sutherland on Statutory Construction, S. 396. But the implications are the other way. Sections 238 and 241 of the Judicial Code indicate a purpose that the Supreme Court should have jurisdiction in all cases where a constitutional right has been denied. Section 23 of the Bankruptcy Act indicates a purpose that the existence of bankruptcy proceeding should not deprive any ordinary citizen of the remedies open to him for protection of his property rights, so long as he does not voluntarily go into those proceedings to assert his rights.

Respectfully,

SOL. E. GORDON,
A. D. LIPSCOMB.

A. D. Lipscomb
Of Counsel for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

Petition of J. E. Broussard et al. for Mandamus to Compel Allowance of Appeal from the Circuit Court of Appeals of the Fifth District.

In the case of

WALTER J. CRAWFORD, TRUSTEE, *Appellant*, vs. No. 3 J. E. BROUSSARD ET AL., *Appellee*.	No. 3325. In the Circuit Court of Appeals, Fifth Circuit.

HORACE CHILTON,
E. R. SPOTTS,
U. F. SHORT,
Attorneys for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

Petition of J. E. Broussard et al. for Mandamus to Compel Allowance of Appeal from the Circuit Court of Appeals of the Fifth District.

In the case of

WALTER J. CRAWFORD, TRUSTEE, *Appellant*, vs. No. 3 J. E. BROUSSARD ET AL., *Appellee*.	No. 3325. In the Circuit Court of Appeals, Fifth Circuit.

Now comes Walter J. Crawford, Trustee, appellant, and prays leave of the Court to submit the following answer to appellees' application for a mandamus, and says:

Moore & Bridgeman, a copartnership composed of E. F. Moore and F. W. Bridgeman, filed their voluntary petition in bankruptcy in the United States District Court for the Eastern District of Texas, on the 16th day of July, 1906.

Said partnership and each of the individuals com-

posing it were on the 26th day of said month adjudged bankrupts. Schedules of assets and liabilities were made part of said petition. Liabilities exceeded $32,500. The assets were of greatly less value.

The Beaumont Rice Mills, a partnership composed of appellees, held a mortgage dated the 28th day of July, 1904, securing the payment of debts aggregating $14,345. They held an additional mortgage dated the 16th day of December, 1904, securing debts amounting to $11,200, as shown on pages 83 and 85 of the record in said cause.

In the beginning of 1906 they owed the Houston Rice Mills $12,492, partially secured by a mortgage (Tr. pp. 115 and 196). They owed rent, $4000, a secured debt to the Parlin & Orendorff Company of $473.92, and other unsecured demands, amounting to $6015.29 (Tr. p. 196). Broussard, the manager of the Beaumont Rice Mills, testified they had been doing business with Moore & Bridgeman for a number of years; that he knew all about their financial affairs; that in 1906 they owned a lot of farm implements and mules and horses. All were embraced in mortgages to the Beaumont Rice Mills, and the Houston Rice Mill Company. Some agricultural implements and machinery were bought from the Parlin & Orendorff Company, and from another company. They were covered by the mortgages.

That he did not really know what property Moore & Bridgeman had in 1906 that was not covered by mortgages. "They did not have any property within

my knowledge that was not covered for all it was worth. When Moore & Bridgeman undertook to rent the McCrimmin rice farm we found it necessary to become his guarantor, and we guaranteed the payment of his expenses" (Tr. p. 96).

On page 141 Broussard stated under oath that about the 1st of January, 1906, Moore was indebted to the Beaumont Rice Mills in the sum of $6177.03, including the indebtedness of Moore & Bridgeman, which had been assumed by Moore. That they were also indebted to the Houston Rice Milling Company and others. That all the indebtedness to the Houston Rice Milling Company was due, and was secured by a mortgage on nearly all, probably eighty per cent. of the property of both Moore and Bridgeman, and the Houston Rice Milling Company had obtained a mortgage and contract by which they were to have all the crops to be raised during the year 1906 by said Moore & Bridgeman, in consideration of $6000 to be advanced for supplies during the year, and that they were then in a condition of insolvency, though not adjudged bankrupts (Tr. p. 141).

On the 9th day of January, 1906, E. F. Moore leased from J. C. McCrimmin 350 acres of land, to be cultivated in rice for a period of five years, and was to pay $3 per acre rent for all suitable for cultivation and cultivated during the life of the lease. The lease was signed by each of the parties. The acknowledgment of E. F. Moore was taken by P. A. Bowlen on the 11th day of January, 1906, and that of J. C. Mc-

Crimmin was taken before John S. Stone, a notary public in Lamar county, Texas (Tr. pp. 86-87).

E. F. Moore testified on page 105 that he leased the McCrimmin land at $3 per acre, and planted it in rice. At the beginning of the year 1906 he had to borrow money to enable him to cultivate the rice from the Beaumont Rice Mills. On page 106 he states he was to get the seed and $500 from them. That he intended to cultivate 1000 acres on the Stengele farm and 280 acres on the McCrimmin farm. That the reason he borrowed $6000 for the 1000 acres and only $1000 for the 280 acres was that he had some money and quite a lot of feed and was trying to pay the Beaumont Rice Mills what he owed them.

F. W. Bridgeman testified on page 122 that Broussard, representing the Beaumont Rice Mills, agreed to furnish the seed and $50 in money and $500 for feed to put thec rop in.

On page 114 he stated that Broussard agreed to furnish $500 in cash and $500 in horse feed.

On page 110 Moore testified that $500 in seed and $500 in addition thereto was all he was to furnish. A mortgage in the form of a bill of sale was executed by Moore to J. E. Broussard on the 5th day of April, 1906, to secure the payment of the $1000 advanced by him to Moore. It was filed for registration as a chattel mortgage (Tr. pp. 63-64).

This mortgage was filed April 5, 1906. The bankrupts probably owed the Beaumont Rice Mills the debts secured by the mortgages dated the 28th day of July,

1904, and the 16th day of December of that year, and $1000 advanced by Broussard to cultivate the crop of rice grown by Moore on the McCrimmin land for the year 1906.

In July, 1906, Bridgeman took a number of his teams to Louisiana to engage in railroad construction. They were seized by a creditor under a writ of attachment. The bankrupts undertook to regain possession. They first conferred with their creditors who held liens upon the property and requested their assistance to recover them. They engaged the services of Attorney G. P. Daugherty for this purpose. He applied to the largest secured creditor, the Houston Rice Milling Company, to file a replevin or take some proceeding to have the property released, so that the teams could be returned and used in harvesting the rice crop on the Stengele farm (Tr. p. 117). This creditor refused to take any action.

Bankrupt Moore and his attorney, Daugherty, next conferred with Broussard, representing the Beaumont Rice Mills, the second largest creditor. Their purpose was to recover the teams held under attachment in Louisiana. They resolved upon bankruptcy, and the petition in bankruptcy was filed for this purpose (Tr p. 120).

The schedule of assets and liabilities were prepared. The Beaumont Rice Mills were scheduled as a creditor for $9000, partially secured. The Houston Rice Milling Company was scheduled as a secured creditor. The liabilities as shown by the schedules amounted in

all to more than $32,500, with assets greatly less. E. J. LeBlanc, a partner in the Beaumont Rice Mills, was appointed trustee by the Referee. He qualified with Broussard as a security on his bond. Nominally he tok charge of the assets of the bankrupts. Crops of rice grown on the Stengel and McCrimmin farms came into his possession. All the live stock, implements and other property were ostensibly in his possession. He never disturbed the bankrupts in their farming operations. They remained in charge of the teams, crops and other property. No inventory was filed. The McCrimmin rice was withheld from the schedule of assets, although it was taken in charge by the trustee. Creditors ascertained that the bankrupts had never been disturbed in the possession of their property, and that the McCrimmin rice had never been scheduled as an asset. This, however, was not until after the rice had all been harvested.

The Beaumont Rice Mills kept on their books whatever accounts of the bankrupts' business that were kept at all after their partner, LeBlanc, was installed as trustee. Creditors filed a petition for the removal of LeBlanc as trustee, because of his failure to file an inventory and of the fact that the business of the partnership was conducted without any sort of regard to the interest of creditors. When their application was filed LeBlanc tendered his resignation, accompanying the same with what purported to be an account of all the business done by him as trustee. He failed to account for the McCrimmin rice. The creditors ex-

cepted to his report, because of this failure and other irregularities complained of, charging that the McCrimmin rice belonged to the bankrupts and was a part of their estate and had come into the possession of said trustee as such. For the first time LeBlanc undertook to defend the action of the creditors in their efforts to charge him with the value of the McCrimmin rice, by asserting that it belonged to his partnership, the Beaumont Rice Mills; that they had purchased it on or about t he 15th day of June, 1906, agreeing to cancel their liabilities to that firm in payment.

The creditors replied that this claim was a fraud, in fact; that no such purchase had ever been made; that the Beaumont Rice Mills and the bankrupts had colluded for the purpose of cheating and defrauding the creditors out of the value of this property, and that the fraud which they had invented for that purpose was concocted after the bankruptcy proceeding had been undertaken and after the rice had come into the possession of the trustee. In proof of this charge the creditors showed that the Beaumont Rice Mills were scheduled as a secured creditor for the sum of $9000. That this debt had never been cancelled. That the property which it was pretended was given in payment had never passed from the possession of the bankrupts. That the Beaumont Rice Mills had continued their accounts against the bankrupts upon their books without any credit showing their payment.

The evidence of both Moore and Bridgeman showed that no such sale had ever been made. When the

schedules were prepared by the lawyer, Daugherty, no such a settlement was ever pretended, but he put the Beaumont Rice Mills in as a creditor, and both bankrupts swore they were creditors, to the amount of $9000, because that was the information furnished him. If any such settlement had been made as a sale of the McCrimmin rice in payment of this debt on the 15th day of June—a month before the schedules were filed—it was never thought of at the time the schedules were filed.

Upon a trial of all these issues before the Referee it was held that he had no jurisdiction of the matter in controversy, but he at the same time held that the evidence was not sufficient to show a sale of the property to the Beaumont Rice Mills. The trustee had, however, acting in collusion and jointly with his co-partners, the appellees in this case, taken and appropriated the McCrimmin rice.

Upon a trial of the right of property before the Judge of the District Court he held and declared that the property belonged to Moore, bankrupt; that he had never sold it; that it came into the possession of the trustee as the property of the bankrupt, and that he was justly chargeable with its value. The evidence sustained the finding of the trial judge. The case was taken upon a petition for review and appealed to the Circuit Court of Appeals, where on a trial of it in the year 1909 the decision of the lower court was affirmed. When the mandate was sent down and the trustee failed to comply with the order of the Court to pay

the value of the rice into its registry the creditors filed a petition for an order directed to the trustee to show cause why he did not either comply with the order of the Court directing the payment or show cause why he should not be fined for contempt. Thereupon the partners constituting the Beaumont Rice Mills brought a suit in the State Court against their co-partnership, LeBlanc, in which they stated the facts substantially as they occurred about the possession of the McCrimmin rice, and of his being charged with the value of it, and directed to pay it into the registry of the court, and that he was threatening to deplete the resources of his partnership by withdrawing the sum necessary to meet the order of the Court without their knowledge or consent, and praying that he be enjoined and restrained from doing so.

The Beaumont Rice Mills had defended the action of the creditors in undertaking to charge the trustee with the value of the rice, and being defeated in its efforts, undertook to try the right of property again in the State Court, under the pretense of charging their partner with withdrawing the funds for the purpose of paying his debt.

Appellant brought his action in the United States District Court to restrain the plaintiffs in the State Court from endeavoring to try the right of property in the rice, which had been taken in charge by the Bankrupt Court and was in the possession of the trustee. He made no effort to interfere with any action between the partners.

A writ of injunction was issued enjoining the trial of the right of property in the State Court. The cause was tried on bill and answer, and the injunction was made permanent. It was appealed to the Circuit Court of Appeals for the Fifth Circuit, and finally to this Court, where the judgment of the lower court was affirmed, so far as it prevented the plaintiffs in the State Court from their undertaking to try the right of property, and reversed so far as it restrained the plaintiffs in said action from trying their case against their co-partner, enjoining him from withdrawing their funds to pay the judgment rendered against him. The result of that action is declared in the case of Hebert vs. Crawford, 228 U. S., 208.

When the mandate from this Honorable Court was sent down the plaintiffs in the State Court proceeded with the trial of their action. This appellant maintained on the trial of said cause that LeBlanc had never threatened to take the funds of his partnership to pay the judgment against him; that he never in fact took said funds; that the Beaumont Rice Mills paid said debt voluntarily, out of contrition because they were really the principals in purloining the property of the bankrupts from the U. S. District Court, and had used their co-partner as a tool to effect this purpose.

Upon the trial of the issues made in said cause the Court found as a fact that LeBlanc had never threatened to take the funds of his partnership to pay the debt; that he never in fact took them, and that

the appellees paid the debt willingly and voluntarily (Tr pp. 191-192).

Appellees herein appealed from the judgment rendered against them in said cause to the Court of Appeals for the Ninth District, and the judgment of the trial court was affirmed on appeal.

Application made to the Supreme Court of the State for a writ of error by appellees was denied. The judgment of the trial Court thereby became final.

They next resorted to this action in the United States District Court, where the fund sought to be recovered is held by the appellant as truee, for its recovery. Upon a trial of it in the lower Court appellees were successful. Upon appeal to the United States Circuit Court of Appeals the judgment of the State Court was reversed, with directions that the appeal be dismissed.

Appeal is now sought to this Court. Application for allowance of the appeal was denied by the Chief Justice who tried the cause, because the judgment of that Court is final, and no appeal therefrom is allowed by the Acts of Congress.

The appellant maintains that the judgment of the Circuit Court of Appeals which heard and determined the case is final, and that no appeal can be taken therefrom, and that the act of the Justice in refusing the application for the allowance of an appeal is correct.

LeBlanc, one of the partners in the Beaumont Rice Mills, became trustee of the estate of of the bankrupts and took all their property, including the rice in con-

troversy, into his possession. The Beaumont Rice Mills used him for the purpose of taking and appropriating the rice in controversy. They kept his accounts on their books. He was under their authority and control, and in conjunction with his co-partners took the rice belonging to the bankrupts for the benefit of his partnership When the creditors undertook to charge him with its value he pleaded the title of his partnership. The partnership itself, in the name of LeBlanc, claimed the property, and the pretended purchase of it by Broussard, representing the partnership, was urged before the Court. The Court was satisfied that the pretended purchase was a fraud or trick resorted to by all the partners in the Beaumont Rice Mills and acquiesced in by the trustee partner for the purpose of taking and appropriating that portion of the bankrupts' property in the hands of the trustee.

Failing in their efforts to recover the property in the bankrupt court in the litigation urged in the name of their trustee partner, appellees undertook to continue their contentions in the State Court, where they were again unsuccessful. They have made their third, and it is to be hoped their final, effort to complete the perpetration of their fraud by returning to the bankrupt court and claiming it in the action in which this appeal is sought.

The property in controversy came into the possession of the trustee after his appointment and qualification, beyond all question. This Court, speaking through Justice Lamar, in the case of Hebert vs. Crawford,

U. S. Sup. Court Rep., 57 L. Ed., page 803, said: "When the Court of Bankruptcy through the act of its officers, such as referees, receivers or trustees, has taken possession of the res it has ancillary jurisdiction to hear and determine adverse claims of creditors to it, and that its possession cannot be disturbed by the process of another court. Citing Murphy vs. John Hoffman Co., 211 U. S., 562, 569, 570; 53 L. Ed., 327, 330, 331; 29 Sup. Ct. Rep., 154, and authorities.

"Nor was this jurisdiction lessened because LeBlanc, Trustee, after gathering the crop delivered the rice into the possession of the Beaumont Rice Mills at their ware-house. The Court had possession of the property, and jurisdiction to hear and determine the interest of those claiming a lien therein or ownership thereof. This jurisdiction cannot be ousted by a surrender of the property by the receiver without authority of the Court. Whitney vs. Wenman, 198 U. S., 553; 49 L. Ed., 1161; 25 Sup. Ct. Rep., 778."

Under these decisions the physical possession of the crop brought the property within the exclusive jurisdiction of the bankrupt court. The finding in the summary proceeding that LeBlanc had received possession as trustee was conclusive against him, and was not subject to collateral attack by third persons. Noble vs. Union Pacific Logging Co., 147 U. S., 173, 174; 37 L. Ed., 126, 127; 13 Sup. Court Rep., 271, and cases cited.

The bankrupt court alone had jurisdiction to hear

and determine any question concerning the property which came into the possession of its officer.

The appellees in this case commenced this action in the bankruptcy court, where the administration of the bankrupts' estate was pending. It was the only court that had jurisdiction of the subject of the action. It is a part of the estate of the bankrupts in the possession of the trustee, and no other court could hear or determine the matters complained of in the appellee's appeal.

The decree of the Circuit Court of Appeals, from which appellees undertook to appeal in this case, was made final by the Act of Congress of January 28, 1915, 38 Stat. at Law, 804, Ch. 22. And the only right of review in this Court is by writ of certiorari. The Act provides that the judgments and decrees of the Circuit Courts of Appeals in all proceedings and cases arising under the Bankruptcy Act and in all controversies arising in such proceedings and cases shall be final, save only that it shall be competent for the Supreme Court to require by a certiorari upon the petition of any party thereto that the proceeding, case or controversy be certified to it for review and determination with the same power and authority as if taken to that court by appeal or writ of error. But certiorari shall not be allowed in any such proceeding, case or controversy unless the petition therefor is presented to the Supreme Court within three months from the date of such judgment or decree.

In the case of William B. Staats Co. et al. vs. The

Surety Trust & Savings Bank as Trustee, U. S. Sup. Ct. Rep., 61, L. Ed., p. 632, this Court, speaking by Mr. Justice Day, says: "The language of this Act is very comprehensive and embraces proceedings and cases arising under the Bankruptcy Act and controversies arising in State proceedings, and provides that the judgments an ddecrees of the Circuit Court of Appeals in such controversies, proceedings and cases shall be final. The case now under consideration is a controversy arising in a bankruptcy proceeding. Hewitt vs. Berlin Mach. Works, 194 U. S., 296, 48 L. Ed., 986, 24 Sup. Ct. Rep., 690; Coder vs. Arts, 213 U. S., 223, 53 L. Ed., 772, 29 Sup. Ct. Rep., 436; 16 Anno. Cases, 1008; Tefft, W. & Co. vs. Munsuri, 222 U. S., 114, 56 L. Ed., 118, 32 Sup. Ct. Rep., 67; Barnes vs. Pampel, 113 C. C. A., 81 (C. C. A. 6th C.), 192 Fed., 525.

"We find no merit in the contention that after the passage of the Act of 1915, appellate proceedings in this court in such suits as this should continue to be controlled by the general provisions of the Judicial Code. This Statute manifested the purpose of Congress to relieve this court from the necessity of considering cases of this character except when brought here by writ of certiorari. Central Trust Co. vs. Lueders, 239 U. S., 11 60 L. Ed, 119, 36 Sup. Ct. Rep., 1; Shattuck vs. Title Guaranty & Surety Co., 239 U. S., 637; 60 L. Ed., 480, 36 Sup. Ct. Rep., 446.

"It follows that the motion to dismiss this appeal for want of jurisdiction must be granted.

"Appeal dismissed."

The claim to the value of the rice in this case is a controversy arising in the bankrupt proceeding pending in the U. S. District Court for the Eastern District of Texas. The judgment of the U. S. Circuit Court of Appeals is final. No appeal will lie from it, and the Justice properly refused the allowance of the appeal. The appellant respectfully submits that the application for a mandamus to compel the allowance of an appeal ought to be denied.

All of which is respectfully submitted.

HORACE CHILTON,
E. R. SPOTTS,
U. F. SHORT,
Attorneys for Appellant.

IN THE

Supreme Court of the United States.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, AND CENTRAL BANK, OF ROCHESTER, NEW YORK, PETITIONERS,

vs.

WOODWARD & LOTHROP, A CORPORATION.

Petition for Allowance of Appeal From a Decree of the Court of Appeals of the District of Columbia and Brief in Support Thereof.

WM. G. JOHNSON,
Counsel for Petitioners.

THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, AND CENTRAL BANK, OF ROCHESTER, NEW YORK, PETITIONERS,

vs.

WOODWARD & LOTHROP, A CORPORATION.

Petition for Allowance of Appeal From a Decree of the Court of Appeals of the District of Columbia.

To the Honorable, The Supreme Court of the United States:

The petitioners, Union Trust Company, of Rochester, New York, and Central Bank, of Rochester, New York, respectfully show:

That in an equity cause, pending in the Court of Appeals of the District of Columbia, wherein Woodward & Lothrop, a corporation, was sole appellant, and petitioners were the only appellees, a decree was entered on January 5, 1920, against petitioners, and the amount in controversy exceeds the sum of three thousand dollars, exclusive of interest and costs. Petitioners are advised that they are entitled, as of right, to an appeal from said decree to the Supreme Court of the United States, under the third clause of section 250 of the Judicial Code (36 Statutes, 1159), because said case involves the

construction and application of the Constitution of the United States, to wit, the Fifth Amendment thereto.

That on January 31, 1920, petitioners prayed said Court of Appeals to allow an appeal from said decree, to this Honorable Court, under the third clause of said section 250 of the Judicial Code, which petition the Court of Appeals denied.

Said decree of the Court of Appeals deprives petitioners of their property and property rights, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that it deprives petitioners of the sum of $3,486.53, by giving conclusive effect, against petitioners, to a prior decree, in another equity cause, wherein petitioners were not parties, were never served with process in any form, never appeared, and were not in privity with any party to said cause.

The facts upon which petitioners base their right of appeal are not disputed by any party to the cause, appear upon the record thereof, and are as follows:

(*a*) In September, 1913, Woodward & Lothrop was indebted to the John Hofman Company, a corporation, of Rochester, New York, in the sum of $9,813.79, for store furniture manufactured by the Hofman Company for Woodward & Lothrop, for use in a store building in Washington, D. C.

(*b*) In said month of September, 1913, the Hofman Company borrowed from petitioners divers sums aggregating $11,450, and to secure payment thereof it executed valid assignments to petitioners of the said balance due to it from Woodward & Lothrop, which assignments vested in petitioners the Hofman Company's title to said entire balance.

(*c*) That Woodward & Lothrop were duly notified of said assignments to petitioners on November 11, 1913, and on January 13, 1914.

(*d*) The Hofman Company made no other assignment to anyone whomsoever of said balance due by Woodward & Lothrop or of any part thereof.

(*e*) In December, 1913, three months after the assignment to petitioners, divers firms and corporations filed notices of mechanics' liens against certain real estate in the city of Washington, belonging to Woodward & Lothrop for sums claimed to be due to them from the Hofman Company, for work and materials claimed to have been furnished by them to said Hofman Company for use in the manufacture of said furniture and they claimed that said furniture constituted fixtures, annexed to the realty, and thereby said real estate was subject to mechanics' lien in their favor.

(*f*) On April 20, 1914, the bill in this case was filed by one of said lienors against all others who had filed notices of lien, and against Woodward & Lothrop and the Hofman Company, to enforce payment of the alleged liens, out of the balance due by Woodward & Lothrop to the Hofman Company which said balance had theretofore been assigned to petitioners, and after the cause was at issue, on October 30, 1915, it was referred to a special master to take the proofs and to report his findings of fact and conclusions of law.

(*g*) In November, 1915, these petitioners were allowed to intervene therein, as assignees of the Hofman Company, to claim the balance of the fund, due by Woodward & Lothrop, under their assignments, against the claims to said balance set up by the lienors. The master found, as a fact, that the furniture manufactured under the Hofman contract was in no way affixed to the realty and as a conclusion of law that no right of mechanics' lien existed therefor, in favor of the lienors. All parties to the cause acquiesced in these findings and conclusions of the special master.

(*h*) In the hearing before the master, Woodward & Lothrop claimed credit against the balance due by it, which had been assigned to the petitioners, for the sum of $3,486.53, being an amount Woodward & Lothrop had paid to Pittsburgh Plate Glass Company under a decree rendered one year and five months after the assignment to petitioners, in a suit begun four months after such assignment. Petitioners were not parties to said suit nor in privity with any party thereto and never appeared therein, and they objected, before the master, to the allowance of said sum as a credit against the balance due to Hofman Company and theretofore assigned to them. The master allowed the credit, however, and petitioners excepted.

(*i*) The Supreme Court of the District of Columbia sustained petitioners' exception and disallowed this claim of credit by Woodward & Lothrop and decreed that Woodward & Lothrop pay to petitioners this additional sum of $3,486.53, and Woodward & Lothrop appealed to the Court of Appeals.

The Court of Appeals reversed the decree of the Supreme Court of the District of Columbia and allowed the credit to Woodward & Lothrop, solely on the ground that the decree in the other case, to which petitioners were not parties, as aforesaid, was *res judicata* as to petitioners, the Court of Appeals saying, in its opinion:

> "Counsel assert that it should have been ruled in this proceeding that the asserted lien of the Pittsburgh Plate Glass Company was without foundation. That question was not before the court, having been finally adjudicated in another proceeding."

On January 21, 1920, within the time prescribed therefor by its rules, petitioners filed a petition in the Court of Appeals for a rehearing on the ground that the decree

of the said Court of Appeals deprived petitioners of their property and property rights, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in giving conclusive effect against petitioners to the said proceedings by the said Pittsburgh Plate Glass Company, but the said Court of Appeals denied said petition and refused a rehearing.

A copy of the opinion of the Court of Appeals and of the petition for rehearing and allowance of an appeal, and the said court's denial thereof are submitted herewith as an appendix. A certified copy of the record in said cause is filed with the clerk of this court.

Petitioners are advised that the question here presented has been decided by this court in the case of Postal Telegraph Cable Co. *vs.* Newport, 247 U. S., 464, in which it is held that a court (p. 476):

> "can not, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein."

Petitioners therefore respectfully pray:

That an appeal to this court from the said decree of the Court of Appeals be allowed to petitioners to the end that said cause may be reviewed by said Supreme Court of the United States and justice done to petitioners in that behalf.

UNION TRUST COMPANY, OF
ROCHESTER, NEW YORK,
CENTRAL BANK, OF ROCHESTER,
NEW YORK,
By WM. G. JOHNSON, *Their Counsel.*

DISTRICT OF COLUMBIA, *ss.*

William G. Johnson being duly sworn, deposes and says that he is counsel for petitioners in the above

application for allowance of appeal and also represented them in both the courts below; that he prepared the foregoing petition and has personal knowledge of the facts therein stated and that the same are true.

WM. G. JOHNSON.

Subscribed and sworn to before me this twenty-fifth day of February, 1920.

J. WILLIAM REILY,
Notary Public, D.C.

IN THE

Supreme Court of the United States.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK,

AND

CENTRAL BANK, OF ROCHESTER, NEW YORK, PETITIONER,

vs.

WOODWARD & LOTHROP, A CORPORATION.

Brief in Support of Petition for Allowance of an Appeal From a Decree of the Court of Appeals of the District of Columbia.

The right of an appeal in this case is claimed under section 250 of the Judicial Code (36 Stat., p. 1159), which provides that:

> "Any final judgment or decree of the Court of Appeals of the District of Columbia may be re-examined and affirmed, reversed or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:
>
> . . . . . .
>
> Third. In cases involving the construction or application of the Constitution of the United States."

It is claimed that the construction and application of the Constitution of the United States are involved in this case and the ground for the contention is as follows:

The John Hofman Company, of Rochester, had, in

September, 1913, assigned to petitioners the entire balance of money due to it from Woodward & Lothrop for store furniture made by Hofman Co. for Woodward & Lothrop.

Woodward & Lothrop was notified of the assignments on November 11, 1913, and January 13, 1914. The sole question in the case was how much did Woodward & Lothrop owe.

In the hearing before the master Woodward & Lothrop claimed credit for the sum of $3,486.53. The sole basis for this claim of credit was the payment of that amount under a decree in another suit, brought by the Pittsburgh Plate Glass Co. against petitioners' assignor, the Hofman Co. and Woodward & Lothrop to enforce an alleged mechanics' lien for material and labor claimed to have been supplied to Hofman Company for some of the store furniture. The claim of Pittsburgh Plate Glass Company was first made *December 27, 1913, three months after the assignment to petitioners*, the suit to enforce it was not brought until January 21, 1914, *four months after said assignment*, and eight days after the *last* notice to Woodward & Lothrop of the assignments to petitioners. The case was not contested and the decree was rendered, by default, against Hofman Company, which was proceeded against by publication, in February, 1915, *a year and four months after* the assignment to petitioners.

The petitioners were not parties to the suit, they were not in privity with any party thereto, were never served with process and never appeared therein.

Petitioners objected to this allowance, but the master allowed it and petitioners objected and excepted. The Supreme Court of the District heard the objection of petitioners, *ore tenus*, at the bar, and disallowed the credit, so that petitioners were not *required* to set up, and *could not* set up, in any form of pleading, any constitutional or other objection, *because the question was*

merely one of evidence and the judgment of the court was in their favor.

Woodward & Lothrop appealed to the Court of Appeals and that court reversed the decree of the Supreme Court of the District of Columbia, and held that the decree in the other case was *res judicata* against petitioners.

The only matter in controversy was this credit claimed by Woodward & Lothrop, and, as the only basis for its allowance was this decree in the other suit *the controlling and only question* in the case was whether that decree was conclusive upon petitioners. This court has decided that to give conclusive effect to a prior judgment against one who is not a party nor in privity with a party therein is violative of the due process of law assured by the Constitution.

In the case of Postal Telegraph Cable Co. *vs.* Newport, 247 U. S., 464, Justice Pitney says (pp. 475-6):

> "Waiving the doubt whether, under the particular facts of this case, the question of *res judicata* can be regarded as independent of the federal questions that were raised, we are of the opinion that the decision reached upon *it is so clearly ill founded that it can not sustain the judgment*, and this for the reason that it *is inconsistent with another federal right of defendant, fundamental in character.*
>
> "The doctrine of *res judicata* rests at bottom upon the ground that the party to be affected, or some other with whom he is in privity has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction. Southern Pacific R. R. Co. *vs.* United States, 168 U. S., 1, 48; Greenleaf Ev., secs. 522-523. *The opportunity to be heard is an essential requisite of due process of law in judicial proceedings.* Windsor *vs.* McVeigh, 93 U. S., 274, 277; Louisville & Nashville R. R. Co. *vs.* Schmidt, 177 U. S., 230, 236; Simon *vs.* Craft,

> 182 U. S., 427, 436. And as a State may not, consistently with the Fourteenth Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard (Pennoyer *vs.* Neff, 95 U. S., 714, 733; Scott *vs.* McNeal, 154 U. S., 34, 46; Coe *vs.* Armour Fertilizer Works, 237 U. S., 413, 423), *so it can not, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein.*"

As the sole matter before the court was the effect to be given to that judgment, against petitioners, the construction and application of the Constitution of the United States were *necessarily involved* and constituted not only the *controlling*, but the *only* question before the court. The instant the judgment was held to establish a right against petitioners, the question of due process of law, under the Constitution, arose, and, until it was so held by the court, no opportunity existed for invoking constitutional protection. The violation of due process of law occurred for the *first time*, when the Court of Appeals, *in its opinion*, held that the court below must give conclusive effect to that judgment. Petitioners then pointed out its constitutional objection to this holding of the appellate court in their petition for rehearing, filed within the rules, and before the mandate issued. The case, therefore, was still pending, because as ruled by this court in Merrimack River Savings Bank *vs.* Clay Center, 219 U. S., 527, 536, an "*appeal must be considered as pending and undisposed of until a mandate issues.*"

When, as here, there is but one question in the case, the response to which is the sole basis for the judgment, and that sole question is determinable *only* by the construction and application of the Fifth Amendment to

the Constitution, it is respectfully submitted that the case is not only one involving the construction and application of the Constitution of the United States,

As said by this court, in Tennessee *vs.* Davis, 100 U. S., 257, 264, a case "may truly be said to *arise under the Constitution* or a law or a treaty of the United States whenever its *correct decision* depends upon the construction of either."

WM. G. JOHNSON,
Counsel for Petitioners.

APPENDIX.

Opinion of Court of Appeals, Petition for Rehearing, Order Denying Same, Petition for Allowance of Appeal to the Supreme Court of the United States and Order Denying Same.

IN THE

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Nos. 3260 and 3261.

WOODWARD AND LOTHROP, INCORPORATED, APPELLANTS,

vs.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, AND CENTRAL BANK, OF ROCHESTER, NEW YORK, CORPORATIONS, INTERVENORS, APPELLEES,

and

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, AND CENTRAL BANK, OF ROCHESTER, NEW YORK, CORPORATIONS, INTERVENORS, APPELLANTS,

vs.

WOODWARD & LOTHROP, INCORPORATED, APPELLEES.

These appeals involve a decree in the Supreme Court of the District sustaining certain exceptions and overruling other exceptions to the report of a Special Master in a case growing out of a suit to enforce mechanics' liens.

In June of 1913, Woodward & Lothrop contracted with F. T. Nesbitt Company, of New York, for the erection of a store building at Eleventh and F Streets Northwest, in this city, and, at about the same time, contracted with the John Hofman Company, of Roches-

ter, New York, for the furnishing and installation, for $31,000, of the store fixtures in the new building and in parts of the adjoining old building. This installation was completed in December, following.

During the month of September, 1913, and while the contract of the Hofman Company was being executed, that company borrowed sums of money from the Central Bank, of Rochester, aggregating more than $16,000, for which it gave its promissory notes and executed assignments of money due and to become due from Woodward & Lothrop, the balance due under these assignments when the work was completed being $9,280. During the same month the Hofman Company borrowed from the Union Trust Company, of Rochester, $5,000, under the same conditions, and there was a balance due under that assignment to this bank of $2,170, at the completion of the contract.

Shortly after the execution of the above assignments the Hofman Company became financially embarrassed and on November 8, 1913, the company notified its creditors that a petition for voluntary dissolution had been filed in New York and that G. Albert Taylor had been appointed temporary receiver. On December 26th, following, the company was adjudged a bankrupt and Mr. Taylor subsequently was appointed trustee. On November 11, 1913, the Union Trust Company notified Woodward & Lothrop of its assignment from the Hofman Company and on November 14th, following, wrote Woodward & Lothrop that it might disregard the former notice and might make settlement "direct with the Receiver, G. Albert Taylor." The Central Bank first notified Woodward & Lothrop of its assignment from Hofman & Company on January 13, 1914. On the same day the Union Trust Company wrote Woodward & Lothrop requesting direct payment to the bank under its assignment.

Among the subcontractors of the Hofman Company was the Pittsburgh Plate Glass Company, and on the 27th of December, 1913, it filed in the court below its notice of lien in the sum of $3,286.53. On the 30th of December, following, an order was passed in the court below authorizing Woodward & Lothrop to pay into the registry of the court "the sum of $3,286.53, the amount of the claim of the lienor in these proceedings, together with the sum of two hundred dollars to cover interest and costs," the order further reciting that "upon the payment of said moneys into the court in accordance with the terms of section 1254 of the Code, the property shall be released, and the money so paid shall be subject to the final decree of the court." On January 21, 1914, pursuant to the provisions of the Code the Pittsburgh Company filed its bill of complaint in the court below to enforce the lien theretofore asserted. Service was made on the Hofman Company by publication and by notice to their last known place of residence in Rochester. Woodward & Lothrop made answer stating, among other things, that it was without knowledge of the terms of the contract alleged to have been entered into between the Hofman Company and the Pittsburgh Plate Glass Company, claimed that certain adjustments would be necessary owing to defective work by the Hofman Company, and directed attention to the deposit it had made and to the bankruptcy of the Hofman Company. On February 4, 1915, about a year after the filing of its bill, the court entered a decree confirming the lien of the plaintiff, the Pittsburgh Plate Glass Company, in the amount claimed and directing that amount to be paid plaintiff or its attorney of record from the sum deposited in court, which payment thereupon was made.

Numerous other subcontractors of the Hofman Company filed notice of liens during December of 1913, and January of 1914, and on April 20, 1914, the Garden City

Plating & Mfg. Company, one of these lienors, filed a bill for the enforcement of its lien against Woodward & Lothrop and the Hofman Company, and also naming the other lienors, including the Pittsburgh Plate Glass Company, as defendants. In that bill were detailed the proceedings culminating in the decree in favor of the Pittsburgh Plate Glass Company.

On October 26, 1915, a decree pro confesso was taken against the Hofman Company and on November 10th, following, this decree was set aside on motion of counsel for the Hofman Company. On the same day the Hofman Company and the two banks, by leave of court, filed intervening petitions in the suit of the Garden City Company, one of the banks claiming $9,280 and the other $2,170 under the assignments already mentioned. Leave to file a similar petition also was sought and obtained by the Trustee in Bankruptcy of the Hofman Company, but no petition was filed.

While the record does not definitely disclose who then represented the banks, it is fair to assume that the counsel who obtained the setting aside of the pro confesso decree and thereby laid the foundation for the filing of the intervening petitions by the banks also represented them. This inference is supported by the fact that since that time he has represented the banks. The intervening petitions of the two banks are silent as to the averments in the main petition concerning the suit of the Pittsburgh Plate Glass Company, the allegation being merely that the claims of the intervenors are paramount to those of the plaintiff or of any of the defendants. The cause was referred to a Special Master to report findings of fact and conclusions of law. At the first session before the Special Master on November 15, 1915, which it will be observed was subsequent to the filing of the intervening petitions,

it was stipulated between counsel for Woodward & Lothrop and counsel for the lienors that the balance due from Woodward & Lothrop to the Hofman Company was $6,013.60, and that no claim would be made against Woodward & Lothrop for any sum in excess of the amount admitted to be due. Hearings were had before the Special Master and on September 30, 1918, his report was filed. The Master found that the furnishings supplied under the Hofman contract by the various subcontractors, asserting their claims in the proceedings, were not affixed to the realty and hence were not fixtures within the meaning of the mechanics' lien statute. He further found that the loans of the two banks were made in good faith and that the assignments were not affected by the bankruptcy proceedings, "that the payment into court in the Mechanics' Lien case of the Pittsburgh Plate Glass Company to discharge an alleged lien which would have been a cloud upon the title of the said Woodward & Lothrop, Incorporated, having been paid by order of the court to the alleged lienor, Woodward & Lothrop, Incorporated, are not bound to pay the money over again." The Master further observed that "the assignees can not complain of this result because their failure to give notice of their assignments to Woodward & Lothrop would be sufficient to protect the latter in making any lawful payment out of the fund." The Master accordingly found the amount due from Woodward & Lothrop to be the amount stipulated on November 15, 1915. The record does not disclose that any claim was made for interest. To this report the bank filed exceptions, claiming that Woodward & Lothrop was not entitled to credit for the money paid into court in the Pittsburgh Plate Glass Company's suit, and that interest should have been allowed on the balance due from Woodward & Lothrop on Decem-

ber 30, 1913. The first of these exceptions was sustained and the second overruled. Accordingly, Woodward & Lothrop appealed from the first and the banks appealed from the second ruling.

We will first consider the appeal of Woodward & Lothrop. Under the provisions of Sec. 1239 of the Code a subcontractor is entitled to a mechanics' lien, and that lien is declared by Sec. 1245 to be superior "to all judgments, mortgages, deeds of trust, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building," etc. This lien must be enforced by a bill in equity (Sec. 1246). Under Sec. 1254, when such a suit has been filed the owner of the building affected "may be allowed to pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct," or he may file a written undertaking, with sureties to be approved by the court after notice to the defendant. "On the payment of said money into court, or the approval of such undertaking, the property shall be released from such lien, and any money so paid in shall be subject to the final decree of the court." Section 1255 provides that a similar undertaking may be offered before any suit is brought. The contention of counsel for the appellee banks is that the payment into court by Woodward & Lothrop, having been made before the suit of the Pittsburgh Plate Glass Company was filed, was unauthorized by statute.

The evident purpose of Sections 1254 and 1255 is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the payment into the court of a sum equal to the amount of the lien with interest and costs, or the filing of an undertaking to cover that

amount. Where admittedly an amount is due the principal contractor and the lien is asserted by a subcontractor, there is no contest between the owner and the subcontractor, the issue being restricted to the contractor and the subcontractor. If the owner does not take advantage of these provisions of the Code for the release of the lien, the statute imposes upon him no duty to notify the contractor of the pendency of the subcontractor's suit. In the present case, had Woodward & Lothrop failed to take advantage of the provisions of either of these sections of the Code, the result would have been exactly the same, for after the Pittsburgh Company had obtained a final decree confirming its lien Woodward & Lothrop would have been fully protected in satisfying that decree. How, then, were the banks prejudiced in any way by what actually was done? The Pittsburgh Company had asserted its lien, the court authorized the payment into its registry of the amount claimed, and when the suit was filed that amount was in court, where it was treated as a deposit under the statute, and from that time on exactly the same procedure was followed as though the filing of the suit had preceded the deposit. In substance and effect there was a compliance with the terms of the statute. To hold otherwise would be to prefer form to substance and impose upon the owner a duty not contemplated by the statute. It will be observed that no notice is required under Sec. 1254, where a money payment is made by the owner, the theory evidently being that cash speaks for itself and that no one possibly could be prejudiced by the substitution of cash for the obligation of the owner to pay the amount due under its contract. It was for this reason that Section 1255 makes no mention of a cash payment. The object of the filing of an undertaking is to release the property from the lien and to satisfy

the final decree. When the suit of the Pittsburgh Company was instituted, therefore, the court had a right to treat the payment of Woodward & Lothrop as a payment made on account of that suit. There the responsibility of Woodward & Lothrop ended, for money thus paid into court no longer is under the control of the owner but of the court.

Counsel for the banks contend that Woodward & Lothrop should have notified them of the suit of the Pittsburgh Plate Glass Company. It is significant, this being a proceeding in equity, that in their intervening petition the banks did not allege their lack of knowledge in this connection. Moreover, on December 12, 1913, the receiver of the Hofman Company in a letter to Woodward & Lothrop, announced its purpose to come to Washington on a day certain to "straighten out the tangle." To do this he was to interview "the attorneys acting for Hofman creditors." On January 14, 1914, after the receiver had been appointed trustee in bankruptcy, he notified Woodward & Lothrop that inasmuch as the banks "were the chief parties at interest," he would turn the facts in his possession over to them. It is inconceivable, in the circumstances, that these banks should have made no inquiry during the year intervening between the filing of the suit of the Pittsburgh Company and the decree under which its lien was confirmed and payment made out of the registry of the court in satisfaction of the decree. Such quiescence is not customary with banks. But, however that may be, Woodward & Lothrop owed them no duty in the premises. The suit was of record and their remedy, if any, must have been obtained therein.

Counsel assert that it should have been ruled in this proceeding that the asserted lien of the Pittsburgh Plate Glass Company was without foundation. That question was not before the court, having been finally adjudicated in another proceeding.

We will now consider the appeal of the two banks from the action of the court in disallowing interest. It is a general rule that interest is not recoverable where payment is prevented by the act of the creditor. Thompson *vs.* Boston & Maine R. R., 58 N. H., 524; Branthwait *vs.* Halsey, 9 N. J. L., 4; Bowman *vs.* Wilson, 12 Fed., 864. In the present case, it is insisted that Woodward & Lothrop might have paid the money into court by filing an intervening petition. It is apparent from the foregoing recital of the facts that the situation was decidedly complicated. Woodward & Lothrop claimed a very substantial allowance on account of poor work, and this allowance ultimately was made. That Woodward & Lothrop were endeavoring to avoid unnecessary delay and expense apparently was recognized by counsel for the lienors when, in November of 1915, they entered into a stipulation to the effect that no interest would be demanded. The banks then had intervened, and at no time prior to the filing of the report of the Special Master did they raise any question as to interest. Woodward & Lothrop were innocent parties and they have been compelled to incur a very considerable expense in protecting their interests. They at all times were ready to pay the amount they really owed, and the delay was through no fault of theirs. We think the court below was right in disallowing the claim to interest.

The decree in No. 3260 is reversed, with costs, and the cause remanded for a decree in conformity with this opinion. The decree in No. 3261 is affirmed, with costs.

No. 3260 *reversed.*

No. 3261 *affirmed.*

CHAS. H. ROBB,
Associate Justice.

Mr. Chief Justice Smyth is of the view that payment into court by an owner, being a statutory right, must be in strict conformity with the statute, and he therefore dissents from the opinion and decree of the court in appeal No. 3260. In appeal No. 3261, he is of the view that Woodward & Lothrop, having had the use of the balance due, should pay interest, and he therefore dissents from the opinion and decree of the court in that cause.

[Endorsed:] Nos. 3260 & 3261. Woodward and Lothrop, Inc., appellant, *vs.* Union Trust Co., of Rochester, New York, et al., and Union Trust Co., of Rochester, New York, et al., appellants, *vs.* Woodward & Lothrop, Inc. Opinion of the court per Mr. Justice Robb. Court of Appeals, District of Columbia. Filed Jan. 5, 1920. Henry W. Hodges, Clerk.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1920.

No. 3260,

WOODWARD & LOTHROP, APPELLANT,

vs.

UNION TRUST COMPANY, OF ROCHESTER, AND CENTRAL BANK, OF ROCHESTER, APPELLEES,

and

No. 3261,

UNION TRUST COMPANY, OF ROCHESTER, AND CENTRAL BANK, OF ROCHESTER, APPELLANTS,

vs.

WOODWARD & LOTHROP, APPELLEE.

PETITION FOR REHEARING.

Now come the Union Trust Company, of Rochester, New York, and the Central Bank, of Rochester, New York, through their counsel, and respectfully pray the court to stay the issuance of its mandate in the above entitled causes, to vacate the judgments of this court entered therein, to allow a rehearing of the said appeals and to give reconsideration thereto, and, in support hereof, show:

I.

That the decision and judgment rendered by this court in Appeal No. 3260 deprives these petitioners,

the appellees therein, of their property and property rights, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

That the following facts are conclusively established by the record and are not disputed by the appellant, to wit:

(*a*) That in September, 1913, the Hofman Company made a valid assignment to the petitioners, vesting in petitioners the absolute ownership of the balance due from Woodward & Lothrop to the Hoffman Company under the contract between them.

(*b*) That the Hofman Company made no other assignment of said balance, or of any part thereof, to any other party whomsoever.

(*c*) That none of the work done or materials furnished by the Hofman Company, or any of its subcontractors, under the contract with Woodward & Lothrop, was of the character for which the law gave a mechanic's lien. Woodward & Lothrop not only did not dipute this but contributed to its establishment in the cause.

(*d*) The sole basis for the allowance of the sum of $3,486.53, part of the said balance assigned to petitioners in September, 1913, as a credit against the amount due petitioners under their assignment, is the payment by Woodward & Lothrop, of said amount, in satisfaction of an alleged mechanic's lien, asserted by the Pittsburgh Plate Glass Company in the equity suit of Pittsburgh Plate Glass Company *vs.* John Hofman Company, and Woodward & Lothrop, No. 32,387, in equity.

(*e*) The filing of the notice of said alleged lien, the institution of the suit to enforce it, and the entry of the decree thereon *all* occurred *after* the assignment by the Hofman Company to the petitioners.

(*f*) Neither of the petitioners was a party to said mechanic's lien proceeding of the Pittsburgh Plate Glass Company. Neither was served with process

therein; both were non-residents of this District; neither was proceeded against by publication; neither ever appeared therein nor took any part therein.

It is respectfully submitted that the record of the said proceedings by the Pittsburgh Plate Glass Company and every part thereof are inadmissible against these petitioners, constitute a *res inter alios acta*, as to these petitioners, and to receive the same in evidence and give them effect so as to defeat petitioners' title to the sum of $3,486.53, part of the sum assigned to them in September, 1913, and of the title to which they were then vested, deprives the petitioners of their property and property rights in violation of the Fifth Amendment to the Constitution.

Counsel for petitioners respectfully requests the court to consider, in connection with the foregoing proposition, the decisions of the Supreme Court of the United States, extracts from which follow.

That petitioners were not parties to said proceeding, were never served with process and never appeared is conclusively established by the record of the case which is in this record in full (Rec., pp. 43-51).

That they were not *in privity* with their assignor, the Hofman Company, in the proceeding, results from the fact that the assignment was made to them *before* any steps of any kind in said proceeding were *begun*.

In Keokuk & Western R. R. Co. *vs.* Missouri, 152 U. S., 301, Justice Brown, says (pp. 313-14):

> "*First.* There was no such privity of estate between the defendant in the suit, namely, the Missouri, Iowa and Nebraska Company, and the defendant in this suit as makes the judgment in that case *res judicata* in this. The mortgage of the Missouri, Iowa and Nebraska Railway Company, under the foreclosure of which this defendant purchased this road, was executed June 1, 1870, and neither the trustee under that mort-

gage, the Farmers' Loan and Trust Company, nor the bondholders, whom this mortgage secured, were parties to that action, which was begun in 1873, to recover the taxes of 1872. While a mortgagee is privy in estate with a mortgagor as to actions begun *before* the mortgage was given, *he is not bound by judgments or decrees against the mortgagor in suits begun by third parties subsequent to the execution of the mortgage*, unless he or some one authorized to represent him, like the trustee of a mortgage bondholder, is made party to the litigation, although it would be otherwise if the mortgage were executed pending the suit or after the decree."

In Dull *vs.* Blackman, 169 U. S., 243, Justice Brewer, says (p. 248):

"We remark again that while a judgment or decree binds not merely the party or parties subject to the jurisdiction of the court but also those in privity with them, yet *that rule does not avail the plaintiffs in error*, for Phelan acquired his rights *prior* to the institution of the suit in New York and was *therefore not privy to that judgment.*

'It is well understood, though not usually stated in express terms in works upon the subject, *that no one is privy to a judgment whose succession to the rights of property thereby affected, occurred previously to the institution of the suit.* A tenant in possession prior to the commencement of an action of ejectment can not therefore be lawfully dispossessed by the judgment unless made a party to the suit. . . . No grantee can be bound by any judgment in an action commenced against his grantor subsequent to the grant, otherwise a man having no interest in property could defeat the estate of the true owner. The foreclosure of a mortgage, *or of any other lien, is wholly inoperative upon the rights of any person not a party to the suit*, whether such person is a grantee, judgment creditor, attachment creditor, or other

lienholder.' Freeman on Judgments (1st Ed.), Sec. 162.

"As Phelan was not brought within the jurisdiction of the New York Court, and as the suit in that court was instituted nearly two months *after* he had acquired full title to the real estate, the decree of that court *did not bind him as a party, nor bind him as in privity with Blackman, his grantor.*"

In Old Colony Trust Co. *vs.* Omaha, 230 U. S., 100, Justice Van Devanter says (p. 122):

"A prior suit by the Electric Company against the city, largely but not entirely like the present, resulted in a decree against the Electric Company. The city now takes the position that that decree is conclusive upon the Trust Company as mortgagee. But the law is otherwise. The Trust Company's rights, and those of the bondholders whom it represents, *were not acquired during or since that suit but long prior thereto*, and the Trust Company was not a party to it. This being so, the Trust Company *is free to maintain the present suit, unembarrassed by the decree in the other.* Keokuk & Western Railroad Co. *vs.* Missouri, 152 U. S., 301, 313; Louisville Trust Co. *vs.* Cincinnati, 76 Fed. Rep., 296."

So, in the recent case of Postal Telegraph Cable Co. *vs.* Newport, 247 U. S., 464, decided in June, 1918, Mr. Justice Pitney says (pp. 274-5):

"There remains only the adjudication in the former suit against the first New York Company, which we assume to have been sufficiently pleaded, and to have substantially involved the points that are now material so as to make them *res judicata* in a subsequent suit between the parties and their privies although based on a different demand (Cromwell *vs.* County of Sac, 94 U. S., 351, 352; Wilson's Executor *vs.* Deen, 121 U. S., 525, 534; Nesbit *vs.* Riverside Independent Dis-

trict, 144 U. S., 610), and which the court of appeals regarded as concluding defendant upon matters of fact as well as law. But there is nothing in the record to make this judgment conclusive as against defendant except upon the theory of a privity of estate between it and the first New York Company. And, as to this, it appears from the averments in defendant's pleadings—indeed, it is stated as a fact in the opinion of the court—that the suit against that company was brought in the year 1899, *two years after it had conveyed its property in the State of Kentucky*, including all its rights and interests in the city of Newport, to another corporation through which defendant afterwards acquired title.

"The ground upon which, and upon which alone, a judgment against a prior owner is held conclusive against his successor in interest, is that the estoppel runs with the property, that the grantor can transfer no better right or title than he himself has, and that the grantee takes *cum onere*. *From this it follows that nothing which the grantor can do or suffer after he has parted with the title can affect rights previously vested in the grantee, for there is no longer privity between them. This doctrine is universally accepted*, and was applied by this court in Keokuk & Western R. R. Co. *vs.* Missouri, 152 U. S., 301, 314; Keokuk & Western R. R. *vs.* Scotland County, 152 U. S., 318, 322; Dull *vs.* Blackman, 169 U. S., 243, 248; Old Colony Trust Co. *vs.* Omaha, 230 U. S., 100, 122."

From a passage in this court's opinion it would seem that this court was mislead, by a letter of the trustee in bankruptcy, written January 14, 1914 (Rec., p. 41), and therefrom concluded that the petitioners knew or ought to have known of the payment into court by Woodward & Lothrop and the bringing of the suit by the Pittsburgh Plate Glass Company. This inference, it will be seen, from the contents of the letter is not

deducible. The trustee is writing from Rochester, after his return from Washington, and is referring to the information he received in an interview with Mr. Everett "*on the 7th inst.*," that is a week *before* writing the letter. The money *had not then been paid into court* and was not so paid in until the *tenth* of January (Rec., p. 25), three days *after* the trustee's interview, and the suit was not filed till the *twenty-first* of January, a week *after* the trustee's letter. He could not, therefore, have communicated either of those facts to the petitioners because he did not know either of them, and if he had learned of the order *authorizing* the payment into court he would have seen, on its face, that it only authorized payment, under Sec. 1254 of the Code *after suit brought.*

Moreover, no material facts can be assumed, if not shown by the record, because the certificate of the judge to the statement of evidence, approved by counsel for both appellant and appellees (Rec., p. 58), says that (Rec., p. 37), "the following is the substance of the evidence before the master pertinent to the said exceptions."

But even if knowledge of all those proceedings could be rightfully imputed to petitioners, the Supreme Court of the United States has several times held that such knowledge does not constitute privity nor make the judgment admissible. Thus in Stryker *vs.* Goodnow, 123 U. S., 527, Chief Justice Waite says (p. 540):

> "We have not overlooked the fact that a *brief was filed at the hearing in this court on behalf of the Railroad Company* to support the claim of Wolcott that the title of that company was the best. Such a proceeding *did not make the Railroad Company a party to the suit, or bind it by the decree.* Being interested in the question to be decided, the company was anxious to secure a judgment that could not be used as a precedent against its own claims in any litigation that might

> thereafter arise in respect to its own property. It is not an uncommon thing in this court to allow briefs to be presented by or on behalf of persons who are not parties to the suit, but who are interested in the questions to be decided, *and it has never been supposed that the judgment in such a case would estop the intervenor in a suit of his own which presented the same questions.*"

In Brandon *vs.* Ard, 211 U. S., 11, Justice Harlan says (pp. 23-24):

> "Ard was not, in any legal sense, a privy to the issue of record between the United States and its opponents, although the validity of the patent received by the Missouri-Kansas Company for the land here in question—under which company the present plaintiffs in error claim—was directly disputed by the Government in that case. It is said that Ard *was an active member of the Settlers' Protective Association.* But that is not a controlling fact. *It may be, as alleged,* that, in respect of the patents issued to it, *the Government was induced to proceed against that company by the representations made and the facts brought to its attention by that association. But that circumstance did not so connect the association with the suit as to make the judgment binding upon its individual members in a suit between other parties.*"

In Bigelow *vs.* Old Dominion Copper Co., 225 U. S., 111, Justice Lurton says (p. 126):

> "To conclude Biegelow by the New York judgment, *it must appear that he was either a party or a privy.* That he was not a party to the record is conceded. He had no legal right to defend or control the proceedings, nor to appeal from the decree. He was, therefore, a stranger, and was not concluded by that judgment as a party thereto. That he was indirectly interested in the result because the question there litigated was one which might affect his own liability as a

judicial precedent in a subsequent suit against him upon the same cause of action is true, but the effect of a judgment against Lewisohn as a precedent is not that of *res judicata*, and the Massachusetts court was under no obligation to follow the decision as a mere judicial precedent. *Nor would assistance in the defense of the suit, because of interest in the decision as a judicial precedent which might influence the decision in his own case, create an estoppel as to Bigelow.* Stryker *vs.* Goodnow, 123 U. S., 527; also, Rumford Chem. Works *vs.* Hygienic Chem. Co., 215 U. S., 156."

Finally, the Supreme Court of the United States has decided that to give effect to a proceeding, as evidence or otherwise, against one who was neither a party nor privy to it, deprives that one of property without due process of law and violates a fundamental right guaranteed by the Constitution. This was ruled in the above cited case of Postal Telegraph Cable Co. *vs.* Newport, 247 U. S., 464 (decided June 10, 1918), in which Mr. Justice Pitney says (pp. 475-6):

"Waiving the doubt whether, under the particular facts of this case, the question of *res judicata* can be regarded as independent of the federal questions that were raised, we are of the opinion that the decision reached upon *it is so clearly ill founded that it can not sustain the judgment*; and this for the reason that it *is inconsistent with another federal right of defendant, fundamental in character.*

"The doctrine of *res judicata* rests at bottom upon the ground that the party to be affected, or some other with whom he is in privity, has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction. Southern Pacific R. R. Co. *vs.* United States, 168 U. S., 1, 48; Greenleaf Ev., secs. 522-523. *The opportunity to be heard is an essential requisite of due process of law in*

judicial proceedings. Windsor *vs.* McVeigh, 93 U. S., 274, 277; Louisville & Nashville R. R. Co. *vs.* Schmidt, 177 U. S., 230, 236; Simon *vs.* Craft, 182 U. S., 427, 436. And as a State may not, consistently with the Fourteenth Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard (Pennoyer *vs.* Neff, 95 U. S., 714, 733; Scott *vs.* McNeal, 154 U. S., 34, 46; Coe *vs.* Armour Fertilizer Works, 237 U. S., 413, 423), *so it can not, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein.*"

II.

With regard to the judgment in No. 3261, it is, with respectful deference, suggested to the court that in addition to the outstanding fact that Woodward & Lothrop has had the use of the furniture since September, 1913, and during the same time, the use in its business, of the admitted balance of $6,013.60, due for the manufacture of that furniture, certain other facts, shown by the record, should weigh strongly to require the payment of interest.

On November 15, 1915, Woodward & Lothrop admitted a balance in its hands over and above all counterclaims by it, of $6,013.60. To this balance it made no claim whatever (Rec., p. 57). Yet it did not pay this sum into court nor offer to do so, nor did it offer to pay any part of it to petitioners, but retained it and used it in its business.

On September 30, 1918, the special master's report was filed, confirming Woodward & Lothrop's admission of a balance of $6,013.60 (Rec., p. 30), but still it retained and used this balance.

On January 17, 1919, the final decree in this case was entered in the court below (Rec., pp. 32-33), yet it did not pay or offer to pay any part of the admitted balance to petitioners or into court, but superseded the *entire* decree (Rec., p. 33) and retained the use of said balance in its business.

On December 30, 1913, when it voluntarily applied for and obtained the order authorizing it to pay into court the amount claimed by the Pittsburgh Plate Glass Company, there were then of record five other notices of lien, aggregating $2,074.68, all but one of which were filed *before* that of the Pittsburgh Plate Glass Company, and that one was filed on the same day as the Pittsburgh Plate Glass Company's. Yet Woodward & Lothrop did not obtain an order to pay into court anything for the release of those other liens, but specially favored the Pittsburgh Plate Glass Company with that payment, retaining all the rest of th fund for use in its own business.

It is respectfully submitted that this course of conduct did not show a willingness to pay what was due, but a willingness to retain it, for use in its business, throughout the litigation, and to apply it among the claimants as it saw fit. In the meantime, all the costs of the proceeding, aggregating $545.17, were, by the special master, charged upon the fund (Rec., p. 30), and in consequence fall on the petitioners.

The record shows that these petitioners, banking institutions whose business is lending money at interest, lent this money to the Hofman Company, in aid of industry, in September, 1913, while the Hofman Company was struggling to complete the contract for Woodward & Lothrop (Rec., p. 26). The furniture was thereafter completed and delivered to Woodward & Lothrop between September

and November or the first of December, and Woodward & Lothrop has been in undisturbed enjoyment of the furniture and money ever since.

Respectfully submitted.

UNION TRUST COMPANY OF ROCHESTER,
CENTRAL BANK OF ROCHESTER,
Petitioners,
By WM. G. JOHNSON,
Their Counsel.

SATURDAY, JANUARY 31st, A. D. 1920.

No. 3260.

WOODWARD AND LOTHROP, INCORPORATED, APPELLANT,

vs.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, ET AL.

and

No. 3261.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, ET AL., APPELLANTS,

vs.

WOODWARD AND LOTHROP, INCORPORATED.

On consideration of the petition for a rehearing in the above entitled causes, it is by the court this day ordered that said petition be, and the same is hereby, denied.

IN THE

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

January Term, 1920.

No. 3260.

WOODWARD & LOTHROP, APPELLANT,

vs.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK,

and

CENTRAL BANK, OF ROCHESTER, NEW YORK,

APPELLEES.

Come now the above named appellees and move the court to allow an appeal to the Supreme Court of the United States from the judgment and decree of this court entered herein on the fifth day of January, A. D.

1920, and to fix the amount of the security for costs on such appeal, and for ground of said motion show:

That the said judgment is a final judgment in a case wherein the amount in controversy exceeds $3,000, and involving the construction or application of the Constitution of the United States, to wit, the Fifth Amendment thereto, within the true intent and meaning of the third clause of section 250 of the act of Congress approved March 3, 1911 (36 Stat., 1159), known as the Judicial Code.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK,
CENTRAL BANK, OF ROCHESTER, NEW YORK,
By WM. G. JOHNSON, *Their Counsel.*

[Endorsed:] No. 3260. Woodward & Lothrop, appellant, *vs.* Union Trust Company, of Rochester, New York, et al. Appeal to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Jan. 31, 1920. Henry W. Hodges, Clerk.

SATURDAY, JANUARY 31st, A. D. 1920.

No. 3260.

WOODWARD AND LOTHROP, INCORPORATED, APPELLANT,

vs.

UNION TRUST COMPANY, OF ROCHESTER, NEW YORK, et al.

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, it is by the court this day ordered that said motion be, and the same is hereby, denied.

PAGES MISN

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 25, inclusive, constitute a true copy of the opinion of said court, the petition for rehearing and the order denying same, and the motion for the allowance of an appeal to the Supreme Court of the United States, and the order denying same in the cases of Woodward and Lothrop, Incorporated, appellant, *vs.* Union Trust Company, of Rochester, New York, and Central Bank, of Rochester, New York, corporations, Intervenors, and Union Trust Company, of Rochester, New York, and Central Bank, of Rochester, New York, corporations, Intervenors, appellants, *vs.* Woodward and Lothrop, Incorporated. Nos. 3260 and 3261, January Term, 1920, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 3rd day of February, A. D. 1920.

[Seal.] HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia.

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IN THE

Supreme Court of the United States.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

Motion for Leave to File Petition.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

MOTION FOR LEAVE TO FILE PETITION.

And now comes James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased, and moves the court for leave to file petition for a Writ of Prohibition and Writ of Mandamus, which petition is presented to the court herewith.

JAMES F. BISHOP,
Administrator of the Estate of
Herman A. Ristow, Deceased.

HARRY W. STANDIDGE,
Proctor for James F. Bishop, Administrator
of the Estate of Herman A. Ristow, Deceased.

IN THE

Supreme Court of the United States.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

Brief in Support of Motion to File Petition.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

BRIEF IN SUPPORT OF MOTION TO FILE PETITION.

STATEMENT OF THE CASE.

In the limitation proceeding filed in the District Court of the United States for the Northern District of Illinois, Eastern Division, by the St. Joseph-Chicago Steamship Company, to limit its liability for damages caused by the tipping over of the steamer Eastland beside its dock in the Chicago River, there is an alleged limited liability fund of $41,598.41, arising from the proceeds of the sale of parts of said steamer which the Great Lakes Towing Company raised, and also parts of said steamer and its equipment, which, while floating down the river, were salved by one Walter Scott.

The value of said property so salved by said Scott, as set forth in a sworn petition filed by him in said limitation proceeding, is $8,214.77, and said Great Lakes Towing Company admitted the allegations of said petition to be true by failing to comply with a rule of court to plead to same.

The District Court has entered a decree directing immediate payment to said Great Lakes Towing Company of $41,883.98 out of said alleged limited liability fund of $41,598.41, said claim of said Great Lakes Towing Company being based on a contract made by it with said St. Joseph-Chicago Steamship Company for the raising of said steamer three days after it tipped over, such payment to be made forthwith unless life salvors who claim a "fair share" thereof shall file a bond for $2,500 within fifteen days after the entry of said decree.

The petition for limitation stands for hearing upon an answer filed thereto by the petitioner herein, denying the alleged right of limitation therein prayed for, and upon exceptions filed by other claimants to said petition, the questions as to the alleged right of said St. Joseph-Chicago Steamship Company to said limitation of liability which it prays for, and its alleged right to have made permanent the temporary injunction issued restraining petitioner and all other limited liability claimants from prosecuting other proceedings to enforce full liability, have not been determined, and until such questions shall be determined, petitioner herein, and all other limited liability claimants, cannot have their rights adjudicated in said limitation proceeding, or in any other proceeding or proceedings.

Petitioner contends that in said limitation proceeding he and all other claimants are entitled to have their rights adjudicated in accordance with Admiralty Rule 55, and otherwise as provided by law, namely, the questions as to said alleged rights of said St. Joseph-Chicago Steamship Company to the limitation of liability, and the permanent injunction restraining other proceedings against it, which it prays for, must first be determined, and then, if such alleged rights shall be granted, all claims must be passed upon, and "after payment of costs and expenses," the fund must be distributed, by final decree, from which final decree any and all parties may appeal, and in said present state of the record said District Court has no jurisdiction to enter the decree complained of, ordering the immediate payment to said Great Lakes Towing Company, upon its said claim based on said contract made with said St. Joseph-Chicago Steamship Company, of all of said alleged limited liability fund, consisting of the proceeds both of said property raised by said Great Lakes Towing Company, and said property salved by said Scott, under procedure contrary to said Admiralty Rule 55, and otherwise contrary to law.

Petitioner therefore asks leave to file a petition for writs of prohibition and mandamus to prevent the carrying out of, and to have set aside, said order and decree providing for such immediate payment.

BRIEF.

I.

THE WRITS OF PROHIBITION AND MANDAMUS SHOULD ISSUE WHEN A DISTRICT COURT IS PROCEEDING CONTRARY TO THE PROCEDURE PRESCRIBED BY THE ADMIRALTY RULES OF THIS COURT.

Ex Parte Slayton, 105 U. S. 451.

Ex Parte Slater, 246 U. S. 128, 133.

II.

THE DISTRICT COURT ACTED WITHOUT JURISDICTION IN ENTERING THE DECREE COMPLAINED OF.

Denny v. *Bennett*, 128 U. S. 489.

Gilchrist v. *Chicago Ins. Co.*, 104 Fed. 566, 573.

Mather Humane Stock Trans. Co. v. *Anderson, et al.*, 76 Fed. 164.

Security Trust Co. v. *Sullivan*, 77 Fed. 778.

Montgomery et al., Claimants of Steamer Republic, v. *Anderson, et al.*, 21 How. (62 U. S.) 386.

The La Bourgogne, 210 U. S. 95.

The J. Doherty, 207 Fed. 997, 1000-1001.

Great Lakes Towing Co. v. *Mill Trans. Co.*, 155 Fed. 11.

Emerson v. *The Pandora*, Fed. Cas. No. 4442.

ARGUMENT.

I.

THE WRITS OF PROHIBITION AND MANDAMUS SHOULD ISSUE WHEN A DISTRICT COURT IS PROCEEDING CONTRARY TO THE PROCEDURE PRESCRIBED BY THE ADMIRALTY RULES OF THIS COURT.

All parties, and all District Courts, are bound by the rules prescribed by this court. Petitioner is bound by such rules, and is entitled to the protection of having all other parties and said District Court bound thereby in said limitation proceeding in question. No party has a right, and no court has jurisdiction, to violate such rules, and this court has the right to and will, issue writs of prohibition and mandamus to prevent the violation of, and enforce compliance with, said rules.

In the limitation proceeding in question herein, under said limitation law and said Admiralty Rules, petitioner is restrained from having a hearing on his said claim for damages in any other proceeding, and cannot have a hearing thereon in said limitation proceeding until said alleged right of limitation therein has been determined, and, if such limitation shall be granted, then, under said limitation law and Admiralty Rule 55, he is entitled to have all other rights of all parties adjudicated, and "after payment of costs and expenses," have a distribution of

the limited liability fund, by a final decree, and the action of the District Court in ordering said fund distributed by the payment of said entire fund to said Great Lakes Towing Company in the present state of the record, is in violation of said law and said Admiralty Rule 55, and without jurisdiction and contrary to law.

In *Ex parte* Slayton, 105 U. S. 451, which involved procedure in a limitation proceeding, this court held that the procedure therein complained of was in accordance with law and was not covered by, and was not in violation of, the Admiralty Rules therein referred to which govern such a proceeding, and stated that the court is not called upon to direct, by a writ of prohibition, who the parties are to whom a fund shall be distributed.

In the case at bar, petitioner is not asking this court to make any direction as to what parties the alleged limited liability fund in question herein shall be distributed to. Petitioner is asking that it shall not be distributed otherwise than in accordance with said limited liability law and said Admiralty Rule 55.

In *Ex parte* Slater, 246 U. S. 128, 133, the action complained of was held to be in accordance with rules of court, and therefore in accordance with law, and under the principles laid down therein and in other cases, mandamus will issue to compel compliance with rules of this court and with law.

II.

THE DISTRICT COURT ACTED WITHOUT JURISDICTION IN ENTERING THE DECREE COMPLAINED OF.

In addition to the reasons stated under Point I, the District Court also acted without jurisdiction in entering the decree complained of for the following reasons:

In the case at bar said limitation law, and all other laws, and said Admiralty Rules, were a part of said contract on which said Great Lakes Towing Company bases its said claim.

Denny v. *Bennett*, 128 U. S. 489.

In *Gilchrist* v. *Chgo. Ins. Co.*, 104 Fed. 566, and authorities cited therein, it is held that an abandonment of a steamer after a disaster confers ownership upon the parties to whom it is abandoned as of the time of said disaster, and in that case certain underwriters to whom the steamer in question therein had been abandoned after it had met with disaster, were held liable for services rendered to said steamer, as owners thereof from the time of said disaster thereto, although the party abandoning same made a contract for such services before said abandonment.

In the case at bar, if the alleged abandonment of the steamer Eastland to petitioner and other limited liability claimants was a valid abandonment and transferred ownership to them as of the time immediately after said steamer tipped over, and said Great Lakes Towing Company therefore had a valid claim for the services which it rendered against them

as such owners, then said District Court, by the decree in question, unconstitutionally and without jurisdiction, has deprived petitioner and said other claimants of their property without due process of law, for said Great Lakes Towing Company has never filed, and petitioners and said other claimants have never had an opportunity to defend against, any such claim.

The decree of the District Court which denied the prayers of the petition and motion for "a preferred, paramount and first lien on said steamer or the proceeds thereof," (see petition, pp. 5, 18, 21-22), was not a final order, and the Court of Appeals had no jurisdiction of the appeal from said decree.

Mather Humane Stock Trans. Co. v. *Anderson, et al.*, 76 Fed. 164.

Security Trust Co. v. *Sullivan*, 77 Fed. 778.

Montgomery et al., Claimants of Steamer Republic, v. *Anderson, et al.*, 21 How. (62 U. S.) 386.

The La Bourgogne, 210 U. S. 95.

In the Montgomery case, *supra* (pp. 387-8), the court said:

> * * * "*under the Act of Congress, no appeal would lie from the District to the Circuit Court until there was a final decree upon the whole case—that is, not until all the claims on the money in the registry had been ascertained and adjusted, and the whole amount of the proceeds of the sale of the vessel distributed, by the decree, among the parties which the District Court deemed to be entitled, according to their respective priorities and rights.*
>
> *The Circuit Court, therefore, had no jurisdiction of the case, as it came before them; and their judgment affirming the decree, was erro-*

neous on that ground. The appeal ought to have been dismissed for want of jurisdiction. This point was directly decided in this court, in the case of Mordecai and others v. *Lindsay and others* (19 How. 200)."

The contract on which said Great Lakes Towing Company bases its claims does not provide for, and said company is not entitled to, a lien upon said steamer, or any part thereof.

The J. Doherty, 207 Fed. 997, 1000-1001.

Great Lakes Towing Co. v. *Mill Trans. Co.*, 155 Fed. 11.

Said decree of the District Court which denied to said Great Lakes Towing Company "a preferred, paramount and first lien on said steamer or the proceeds thereof," also was a proper order, as said company could not have had such a lien for the reason that if it had a lien on the entire steamer or its proceeds, it did not have "a preferred, paramount and first lien," for Mr. Scott also had a lien thereon. Undoubtedly, however, said Scott did not have a lien upon the property raised by said Great Lakes Towing Company, and the latter did not have a lien upon said property salved by said Scott, and the court has no jurisdiction to award to said Great Lakes Towing Company proceeds of said property salved by said Scott.

In *Emerson* v. *The Pandora*, Fed. Cas. No. 4442, party towing burning craft across river and carrying away rigging, was held to have salvage claim only against rigging, which could not be enforced under libel claiming lien against craft and cargo.

In any event, said order of the District Court de-

nying to said Great Lakes Towing Company "a preferred, paramount and first lien on said steamer or the proceeds thereof," was a proper order, the mandate of the Court of Appeals does not direct that said company be allowed such a lien, and said District Court has no jurisdiction to grant same, has no jurisdiction to order paid to said company any of the proceeds of said property salved by said Scott, and has no jurisdiction to enter judgment on said claim of said company with interest, and then allow interest on interest by decreeing the payment of interest thereon.

Petitioner therefore respectfully prays that his motion for leave to file said petition be granted.

Respectfully submitted,

HARRY W. STANDIDGE,
Proctor.

Minnesota State Library.

IN THE

Supreme Court of the United States.

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

PETITION.

HARRY W. STANDIDGE,
PROCTOR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

IN RE PETITION OF JAMES F. BISHOP, ADMINISTRATOR OF THE ESTATE OF HERMAN A. RISTOW, DECEASED, FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS.

MOTION FOR LEAVE TO FILE PETITION.

And now comes James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased, and moves the court for leave to file the annexed petition.

JAMES F. BISHOP,
Administrator of the Estate of Herman A. Ristow, Deceased.

HARRY W. STANDIDGE,
Proctor for James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased.

IN THE

SUPREME COURT OF THE UNITED STATES.

In re Petition of James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased, for Writ of Prohibition and Writ of Mandamus.

PETITION FOR WRITS OF PROHIBITION AND MANDAMUS.

To the Honorable the Judges of the Supreme Court of the United States:

The petition of James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased, on behalf of himself and all other aggrieved parties, against the Honorable George A. Carpenter, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, sitting in Admiralty, respectfully represents:

1st. Petitioner James F. Bishop, is the duly appointed and qualified administrator of the estate of said Herman A. Ristow, deceased.

2d. Said Herman A. Ristow, deceased, lost his life while a passenger on the steamer Eastland, by reason of said steamer tipping over beside its dock in the Chicago River, in Chicago, Illinois, on July 24, 1915.

3d. On August 17, 1915, in the District Court of the United States for the Northern District of Illinois, Eastern Division, petitioner filed a proceeding in admiralty against said St. Joseph-Chicago Steamship Company and others, to recover damages for the death of said Herman A. Ristow, deceased.

4th. On August 17, 1915, said St. Joseph-Chicago Steamship Company, under Sections 4283, 4284 and 4285 of the U. S. Revised Statutes, and the various acts amendatory thereof and supplemental thereto, filed in said District Court a limitation proceeding to limit its liability caused by the tipping over of said steamer, and on August 19, 1915, abandoned or attempted to abandon, said steamer to petitioner and all other claimants in said limitation proceeding, by an alleged transfer of said steamer to a trustee appointed by the court in said limitation proceeding.

5th. On August 21, 1915, in said limitation proceeding, the court issued a monition and injunction restraining petitioner from the further prosecution of said proceeding theretofore brought by him to recover damages for the death of said Herman A. Ristow, deceased, and also restraining petitioner and all other claimants in said limitation proceeding from the prosecution of any and all other proceedings of any nature to enforce any liability covered by said limited liability statutes against said St. Joseph-Chicago Steamship Company and said steamer, and said injunction still remains in force and effect.

6th. On September 1, 1915, the Great Lakes Towing Company, filed in said limitation proceeding a petition and claim alleging that on July 27, 1915, it made a contract with said St. Joseph-Chicago Steamship Company to raise the steamer Eastland for $34,500, which contract was approved by underwriters for companies insuring said steamer, and that it had performed said contract, and praying that the court "will pronounce in favor of its claim and

will decree that it has a prefered, paramount and first lien upon said steamer Eastland which has been surrendered and transferred to a trustee in pursuance of said limitation proceedings," which petition, claim and contract are hereinafter set forth and made a part hereof.

7th. On November 18, 1915, petitioner filed an answer to said petition for limitation of liability, denying that said owner of said steamer was entitled to the limitation of liability prayed for.

8th. On November 23, 1915, in said limitation proceeding, said Walter Scott filed a sworn petition, setting forth that he saved and delivered to said steamer, parts of said steamer and its equipment of the value of $8,214.77, and praying to be awarded a reasonable allowance therefor, and all parties to said cause were ordered to plead to said petition within 10 days.

9th. Said Great Lakes Towing Company never complied with said rule to plead to said petition of said Scott, and thereby admitted the allegations of said petition to be true.

10th. On December 20, 1915, on petition of said Great Lakes Towing Company, and by order of court, in said limitation proceeding, said parts of said steamer which said Great Lakes Towing Company raised, and said parts of said steamer and its equipment which said Scott salved, were sold, the proceeds of said sale being $46,000.

11th. On January 3, 1916, over objection of petitioner and others, said sale was confirmed by the court.

12th. On January 3, 1916, also, said Great Lakes

Towing Company filed a written motion for payment of its said contractual claim of $34,500, which motion is hereinafter set forth and made a part hereof.

13th. On January 17, 1916, petitioner and other claimants filed exceptions to said petition of said Great Lakes Towing Company and objections to the allowance of its said claim, on the ground, among others, that the court was without jurisdiction to allow the payment of its said claim based on said contract made by it with said St. Joseph-Chicago Steamship Company, out of the funds derived from the sale of said steamer.

14th. On November 3, 1916, the court entered an order finding and holding only that "said Great Lakes Towing Company is not entitled to the relief prayed for by it in said petition and motion to have its said claim decreed a preferred, paramount and first lien on said steamer or the proceeds thereof, and it is ordered that said prayer of said petition and motion be and the same are hereby denied."

15th. Thereupon said Great Lakes Towing Company appealed from said order denying said prayer of its said petition and motion, to the United States Circuit Court of Appeals for the Seventh Circuit, and shortly thereafter petitioner and other claimants moved said Circuit Court of Appeals to dismiss said appeal on the ground that said order appealed from was not a final and appealable order.

16th. On July 23, 1918, said Court of Appeals denied said motion to dismiss said appeal, and reversed and remanded said decree of said District Court appealed from as aforesaid, and directed said District Court to allow appellant's claim with interest and costs.

17th. On November 19, 1918, said Court of Appeals amended its decree so that as amended it provided that "It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with direction to allow appellant's claim with costs and interest at the rate of five per cent from the date of filing of the claim of the appellant, Great Lakes Towing Company."

18th. On April 2, 1919, various parties, as alleged salvors of human lives, applied to the District Court for leave to file in said limitation proceeding, claims for a fair share of the remuneration awarded to the Great Lakes Towing Company as salvors of said steamer, under Section 3 of Chapter 265 of Volume 37 of the United Statutes at Large, which provides "That salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo and accessories."

19th. On April 7, 1919, said Great Lakes Towing Company filed in said District Court, the mandate of said Court of Appeals, issued in accordance with said amended decree of said court.

20th. On April 24, 1919, said District Court granted said motion of said life salvor claimants to file claims as aforesaid in said limitation proceeding, and thereupon said claimants filed their said claims therein.

21st. On May 12, 1919, said Great Lakes Towing

Company filed in said Circuit Court of Appeals a petition for mandamus against the Honorable Kenesaw M. Landis to compel him to enter a decree for the immediate payment to it of its said claim, and later filed a motion in said Court of Appeals to amend the mandate of said court so as to make it provide for the entry of an order for the immediate payment of said claim, and on July 1, 1919, said Court of Appeals denied said petition for mandamus and said motion to amend said mandate.

22d. On August 6, 1919, by agreement of all parties, said money in the registry of the court was invested in United States Victory Liberty Loan 4¾% bonds.

23d. On December 9, 1919, said District Court sustained exceptions filed by said Great Lakes Towing Company to said claims filed by said life salvor claimants, and gave leave to said claimants to file amended claims.

24th. On December 16, 1919, on motion of said life salvor claimants, said District Court entered an order, in accordance with the mandate of said Court of Appeals, providing that "It is ordered that the claim of the Great Lakes Towing Company for $34,500, with interest at five per cent from date of filing said claim for salving the steamer Eastland be and the same is hereby allowed, in accordance with the terms of said mandate, saving and reserving to the salvors of human life, who have heretofore filed their claims herein, the right to have their claims to a fair share thereof adjudicated."

25th. On December 23, 1919, said District Court entered said order and decree herein complained of,

sustaining exceptions to the amended claims of said life salvors and dismissing them, allowing said claim of said Great Lakes Towing Company for $41,883.98, with costs to be taxed, as "a first, preferred and paramount lien against the funds now in the registry of the court arising from the sale of the steamer Eastland," entering judgment in favor of said Great Lakes Towing Company for said sum of $41,883.98, with interest until paid at five per cent, and also for costs to be taxed, and directing the clerk of said court to pay to said Great Lakes Towing Company the amount of said judgment from said funds now in the registry of said court, unless bond for $2,500 should be filed by said life salvor claimants within 15 days, as will more fully appear by said decree hereinafter set forth and made a part of this petition.

26th. There are, and at the time of the entry of said decree on December 23, 1919, there were, pending in said limitation proceeding, petitioner's said death claim, and several hundred other death, personal injury and supply claims, upon which no hearing or adjudication has been had, and upon which no hearing can be had until the question as to the alleged right of said St. Joseph-Chicago Steamship Company to the limitation of liability which it prays for has been determined, and said injunction remains in force prohibiting action on said claims in any other proceedings.

27th. On December 23, 1919, the date of the entry of said order and decree complained of, there was in the registry of said District Court as an alleged limited liability fund in said limitation proceeding,

arising from the sale of said parts of said steamer which said Great Lakes Towing Company raised, and said parts of said steamer and its equipment which said Scott salved, as aforesaid, after the payment, with the consent of all parties, of $500 to said Scott as a reasonable allowance for salving property, admitted, as aforesaid, to be of the value of $8,214.77, and payment of a part of the costs and expenses theretofore incurred in said limitation proceeding, and after deducting the governmental fee of one per cent to be deducted for distribution of said fund, the sum of $41,598.41, which sum, by agreement of all parties, has been invested in United States Victory Liberty Loan 4¾% Bonds, as aforesaid.

28th. In this state of the record, with said sum of $41,598.41 in the registry of the court as an alleged limited liability fund, said District Court has ordered that $41,883.98, with interest at five per cent and costs, be paid to said Great Lakes Towing Company, in payment of its said claim based on said contract which it made with said St. Joseph-Chicago Steamship Company, which contract does not provide that said Great Lakes Towing Company should have any lien upon said steamer, or any part thereof, and no evidence was introduced tending to show that said contracting parties intended that said Great Lakes Towing Company should have any such lien, such payment to said Great Lakes Towing Company to be made forthwith, unless life salvor claimants file a bond for $2,500 within 15 days after the date of the entry of said order, namely, December 23, 1919.

29th. It is agreed by the respondent to this peti-

tion that the carrying out of said order and decree will be stayed pending action of this court on this petition.

30th. This petition is for writ of prohibition and mandamus to prevent the carrying out of, and to have vacated and set aside, said order and decree complained of herein, and entered as aforesaid in said limited liability proceeding begun by said St. Joseph-Chicago Steamship Company, in said United States District Court for the Northern District of Illinois, Eastern Division, No. 32231.

31st. In said limitation proceeding the petition for limitation stands for hearing upon answer of petitioner and exceptions of other claimants filed thereto, the questions as to the alleged right of said petitioner for the limitation prayed for and its alleged right to a permanent injunction restraining your petitioner and other claimants from prosecuting suits for full liability, have not been determined by the District Court, and until said court determines such questions, the rights of petitioner, a death claimant, and all other claimants in said limitation proceeding, to prosecute suits for full liability, and their rights otherwise, cannot be adjudicated.

32d. Petitioner and all other parties aggrieved are entitled to have their rights determined under the limited liability statutes and the Admiralty Rules prescribed by this court, according to due process of law, namely:

1. The questions as to the alleged right of said St. Joseph-Chicago Steamship Company to the limitation of liability which it prays for, including such alleged right to limitation under the limited liability

act of 1884, without paying into court the insurance on said steamer, and its alleged right to a permanent injunction restraining petitioner and all other claimants from prosecuting suits for full liability, must be determined.

2. If such limitation of liability should obtain and said injunction should be made permanent, then, under Admiralty Rule 55, there should be a final decree so adjudicating and passing upon all rights of all claimants, and "after payment of costs and expenses," such final decree should direct distribution of the limited liability fund.

3. If, also, such limitation of liability should obtain, and said injunction should be made permanent, and if by reason of the alleged abandonment of said steamer by said St. Joseph-Chicago Steamship Company to petitioner and said other limited liability claimants, they became the owners of said steamer as of the time immediately after it tipped over, then the question would arise whether said Great Lakes Towing Company had any right to enforce payment of its said claim based upon said contract made by it with said St. Joseph-Chicago Steamship Company, and whether the court had any jurisdiction to order the payment of such contractual claim, out of said limited liability fund.

4. If such limitation of liability should not obtain, and said injunction should be dissolved, then petitioner and other claimants would be entitled to prosecute proceedings for full liability, including damages sustained by reason of the granting of said injunction, and the rights of all parties otherwise, also would have to be determined accordingly.

33d. Said Great Lakes Towing Company has never filed in said limitation proceeding any claim other than said claim based on its said contract with said St. Joseph-Chicago Steamship Company and petitioner contends that, if he and said other alleged limited liability claimants became the owners of said steamer by reason of said alleged abandonment of it to them as of the time immediately after it tipped over, (which cannot be determined until said alleged right of said St. Joseph-Chicago Steamship Company to said limitation of liability prayed for has been adjudicated), and if, therefore, said Great Lakes Towing Company would be entitled to enforce a claim as against said petitioner and other claimants as such owners of said steamer, for the payment to it of a reasonable sum for its services in raising the parts of said steamer which it did raise, then petitioner and said other claimants have been deprived of their right to defend against such a claim, and the court has no jurisdiction to deprive them thereof, or to enter the order complained of directing the payment to said Great Lakes Towing Company of its said claim based on its said contract with said St. Joseph-Chicago Steamship Company, and particularly has the court no jurisdiction to enter said order under said present state of the record in said limitation proceeding.

34th. If, under said present state of the record in said limitation proceeding, said order complained of shall be carried out, said injunction restraining petitioner and other claimants from prosecuting proceedings for full liability will still be in force, petitioner and said other claimants will be deprived of the procedure provided by said Admiralty Rule 55

of a final decree being entered adjudicating upon all questions and claims, and "after payment of costs and expenses," ordering a distribution of the fund, which would permit petitioner and said other claimants to have all of their rights in the premises adjudicated on one appeal from such final decree, and petitioner contends that under the present state of the record the court has no jurisdiction to enter said order and decree, and that, in violation of the constitution said order deprives petitioner and said other claimants of their property (if said alleged abandonment of said steamer to them made it their property), without due process of law.

35th. Petitioner further says that there are no funds in said estate of Herman A. Ristow, deceased, with which to prosecute an appeal from said order complained of, and that if any relief could be obtained on such an appeal, it would be a great and improper hardship upon petitioner and said other claimants to force them to prosecute such an appeal.

Wherefore petitioner, on behalf of himself and all other aggrieved parties, prays that a writ of prohibition may issue against the said George A. Carpenter, judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, and each other judge of said court, prohibiting him and them from proceeding or allowing proceedings under said order and decree complained of, so far as it allows said claim of said Great Lakes Towing Company for $41,883.98, with costs to be taxed, as a first, preferred and paramount lien against the funds now in the registry of said District Court arising from the sale of the steamer Eastland, enters

judgment thereon for said amount, with interest until paid at 5 per cent., and also for costs to be taxed, directs the clerk of said District Court to pay the amount of said judgment to said Great Lakes Towing Company, or to its proctors of record, from said funds now in the registry of said District Court, orders and decrees that live salvor claimants file a bond for $2,500 within 15 days after the date of the entry thereof, namely, December 23, 1919, or that in the event such bond be not filed within said time said clerk shall make payment of said judgment as aforesaid, and that a writ of mandamus issue directing and requiring said District Court to vacate and set aside said part of said order and decree.

JAMES F. BISHOP,
Administrator of the Estate of Herman A. Ristow, Deceased.

HARRY W. STANDIDGE,
Proctor for Petitioner.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

James F. Bishop, being duly sworn, says that he is the duly appointed and qualified administrator of the estate of Herman A. Ristow, deceased; that he has read the foregoing petition and knows the contents thereof and that the same is true as he verily believes.

JAMES F. BISHOP,

Subscribed and sworn to before me this 8th day of January, A. D. 1920.

L. A. KELLY,
Notary Public in and for Cook County, Illinois.

IN THE DISTRICT COURT OF THE UNITED STATES.
For the Northern District of Illinois,
Eastern Division.

In the Matter of the Petition of The St. Joseph-Chicago Steamship Company to Limit its Liability as Owner of the Steamer Eastland.

Claim of Great Lakes Towing Company.

To the Honorable Judges of said Court and to the Commissioner:

Now comes the Great Lakes Towing Company by leave of the court and says:

1. It is a corporation duly created and existing under and by virtue of the laws of the State of New Jersey and is engaged in a general towing and wrecking business upon the Great Lakes, their con-

necting and tributary waters; that as such it has at all times mentioned herein had under its control and management wrecking tugs, and various steam pumps and other outfit and paraphernalia customary to be employed in rendering assistance to sunken vessels or vessels otherwise imperiled.

II. Your claimant, Great Lakes Towing Company, has a claim against the steamer Eastland amounting to the sum of $34,500 with interest thereon and the basis of its said claim is as follows:

That on the morning of July 24, 1915, said steamer Eastland while lying at a passenger dock on the south side of the Chicago River just west of Clark street bridge in the City of Chicago, Illinois, capsized and went over on her port beam ends, filled and settled on the bottom of the river where she lay partly submerged; that on or about July 27, 1915, your claimant entered into a contract evidenced by certain written communications hereinafter mentioned, to raise and deliver said steamer, righted and pumped out to a dock in the vicinity where she lay sunk for the sum of $34,500, no cure no pay, the written communications evidencing said contract being as follows:

1. Letter dated Chicago, July 25, 1915, directed to Captain Robert Young and signed by St. Joseph Chicago Steamship Company, and approved by T. C. Warkman, Surveyor for Underwriters, copy of which is marked Exhibit "A."

2. Letter dated Chicago, July 26, 1915, directed to The St. Joseph-Chicago Steamship Company and Underwriters and signed by Great Lakes Towing Company, by Alex Cunning, Wrecking Master and

approved by T. C. Warkman, Underwriters Surveyor, copy of which is marked Exhibit "B."

3. Letter dated July 27, 1915, directed to Mr. A. G. Lange, Chicago, Illinois, signed by St. Joseph-Chicago Steamship Company by W. H. Hull, Vice President, copy of which is marked Exhibit "C."

4. Letter dated July 27, 1915, directed to Great Lakes Towing and Wrecking Company, Capt. Alexander Cunning, Wreck Master and signed by A. G. Lange, copy of which is marked Exhibit "D."

Copies of said Exhibits "A," "B," "C" and "D" are attached hereto and made a part hereof; that in pursuance of said contract said Great Lakes Towing Company commenced salvage operations on said steamer and succeeded in raising and righting her and pumped her out and delivered her to a dock in the vicinity of where she lay sunk and she was accepted by the petitioner, The St. Joseph-Chicago Steamship Company.

III. Your claimant, Great Lakes Towing Company, further says that no part of said sum of $34,500 has been paid to it by anyone and that the whole thereof is due with interest.

Your claimant further says that it has filed herewith Answer to the said petition of the St. Joseph-Chicago Steamship Company denying its right to any limitation of liability against its said claim.

IV. Your claimant, Great Lakes Towing Company, further says that it has a maritime lien against said steamer Eastland paramount to all claims of every nature, kind and description.

Wherefore, your claimant prays that this Honor-

able Court will pronounce in favor of its claim and will decree that it has a preferred, paramount and first lien upon said steamer Eastland which has been surrendered and transferred to a trustee in pursuance of said limitation proceedings.

GREAT LAKES TOWING COMPANY,
By S. P. SHANE,
President.

GOULDER, WHITE & GARRY,
Proctors for Claimant,
Great Lakes Towing Company.

State of Ohio, }
Cuyahoga County. } ss.

S. P. Shane, being first duly sworn, on his oath says he is President of the Great Lakes Towing Company; that he has read the foregoing claim and knows the contents thereof and that the same is true as he verily believes.

S. P. SHANE.

Subscribed in my presence and sworn to before me this 31st day of August, 1915.

T. H. GARRY,
(Seal) *Notary Public.*

EXHIBIT "A."

Hotel La Salle.
Chicago, July 25, 1915.

Capt. Robert Young,
Dunham Towing & Wrecking Co.,
Wells St. Bridge,
Chicago, Illinois.

Dear Sir:

The steamer "Eastland" is lying capsized on her port beam ends West of Clark Street Bridge, Chicago in about 17 ft. of water. You are requested to submit your lowest bid to raise this vessel right her and deliver her pumped

free of water to a dock in the vicinity of where she now lies.

Your bid to include the cost and all expenses attached to any and all labor, materials, equipment, tools and any or all appurtenances required for the fulfillment of the contract.

The contractor must make his own arrangements with the Federal, State or Municipal authorities with respect to any permits required for the successful carrying out of the contract.

Your bid to be on the "no cure no pay" basis, payment to be made only on the successful completion of the contract.

The owners reserve the right to reject any or all bids.

Bids to be delivered addressed to the owners, not later than 5 p m. July 26, 1915, at the office of Messrs. Prindiville & Co., Insurance Exchange Building, marked "Bid to raise 'Eastland' where they will be opened before all parties concerned.

St. Joseph-Chicago Steamship Co.
W. C. Steele
Per A. G. Lange.

In accordance with letter of July 26/15 addressed to T. C. Warkman.

Approved:
T. C. Warkman,
Surveyor of Underwriters.

Exhibit "B."

Chicago, July 26, 1915.

The St. Joseph-Chicago Steamship Company and Underwriters.

Dear Sirs:—

Replying to your favor dated July 25, 1915, requesting the Great Lakes Towing Company to make a tender to salve the steamer "Eastland," now sunk in Chicago River near Clark street Bridge. We will make you the following proposition:

We will upon notification of the acceptance of

our proposition immediately commence with the necessary equipment to salve the steamer "Eastland" as expeditiously as circumstances will permit; on condition that the Great Lakes Towing Company is exempt from all claims from damage to hull of steamer Eastland or loss of time that said steamer Eastland may sustain during wrecking operations. We will deliver said steamer righted and pumped out to a dock in the vicinity of where she now lies for the sum of ($34,500), thirty four thousand five hundred dollars.

GREAT LAKES TOWING COMPANY,
By ALEX CUNNING
Wrecking Master.

Approved without prejudice.

Subject to the terms of the policies for the amount of $34,500.

T. C. WARKMAN,
Uwrs Surveyor.

EXHIBIT "C."

St. Joseph-Chicago Steamship Company,
St. Joseph, Mich. July 27, 1915.

Mr. A. G. Lange,
Chicago, Ill.

Dear Sir:—

We are satisfied to have you represent us in the matter of agreeing to a contract for the raising of the "Eastland" and delivering her alongside of the dock so that she may be surveyed and examined. You may, if it is necessary, sign a contract with the Wrecking Company to accomplish this purpose.

Yours truly,
ST. JOSEPH-CHICAGO STEAMSHIP CO.
B. W. H. HULL,
Vice President.

EXHIBIT "D."

July 27, 1915.

Great Lakes Towing & Wrecking Co.,
Capt. Alexander Cunning, Wreckmaster,
Chicago, Ill.

Gentlemen:—

"Eastland"

On behalf of the St. Joseph-Chicago Steamship Company, owner of the steamer "Eastland" and in accordance with its authority as per copy attached hereto, I hereby for and on its account, accept your proposal to raise the said steamer "Eastland" and deliver her into dock, for the sum of thirty four thousand five hundred dollars ($34,500), "no cure no pay," in all respects in accordance with the terms of the specifications dated July 25th, 1915, and your proposal dated July 26th, 1915, copies of which are attached.

Yours very truly,

AGL-DC (Signed) A. G. LANGE.

(Endorsed) Filed Sep. 1, 1915, T. C. MacMillan, Clerk.

No. 32231.

UNITED STATES OF AMERICA.

Northern District of Illinois.

Eastern Division.

In the matter of the Petition of the St. Joseph-Chicago Steamship Company to Limit Liability in the matter of the steamer Eastland. } Motion.

Now comes the Great Lakes Towing Company and moves the court for an order under which it shall be paid the amount of its claim for salvage as set up in its claim and petition heretofore filed herein,

that is, the sum of thirty-four thousand five hundred dollars ($34,500), with interest from August , 1915.

Said Great Lakes Towing Company represents that its said salvage claim in the sum of $34,500, with interest as aforesaid, is the first and paramount lien against said steamer or the proceeds of the sale thereof, and accordingly asks that said amount be paid to it out of the funds derived from the sale of said steamer.

GOULDER, WHITE & GARRY,
WILKERSON, CASSELS & POTTER,
Proctors for Great Lakes Towing Company.

(Endorsed) Filed Jan., 3, 1916, T. C. MacMillan, Clerk.

No. 32231.

IN THE
DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

In the Matter of the Petition of St. Joseph-Chicago Steamship Company, owner of the Steamer Eastland, for limitation of Liability. } ORDER.

At a stated term of the District Court of the United States for the Northern District of Illinois, Eastern Division, held in the court rooms in the Federal Building in the City of Chicago, on the 23d day of December, 1919.

Present: Hon. George A. Carpenter, District Judge.

This cause coming on to be heard upon the application of Sherwood S. Mattocks, on behalf of himself and other salvors of human life, to file amended claim, it is ordered by the court that leave be and the same is hereby given to the said petitioners to file their said amended claims and upon the application of the Great Lakes Towing Company for an order that the exceptions heretofore filed to the amended claims of the life salvors stand as exceptions to the said amended claims as amended, it is so ordered, and this cause coming on to be heard upon the said amended claims as amended and the exceptions of the Great Lakes Towing Company thereto, it is ordered by the court that the exceptions so filed to said amended claims as amended, which amount to a general demurrer and the exceptions that the services of the said life salvors and all and each of them were performed more than two years prior to the making or filing of any such claim and no sufficient excuse or reasons under the statute for said delay is given, be and the said exceptions are hereby sustained, and the other exceptions filed herein by the Great Lakes Towing Company are hereby overruled. Thereupon the said Sherwood S. Mattocks, for himself and other life salvors, having elected to stand by their said claims as amended, it is ordered by the court that the said claims of said life salvors and each of them be and the same are hereby dismissed, to each of which said rulings and orders of the court sustaining the exceptions of the Great Lakes Towing Company and dismissing the said claims as amended, the said Sherwood S. Mattocks, on his own behalf and on behalf of other life salvors, by their proctors, duly excepted.

And now the cause coming on to be heard on the motion and application of Great Lakes Towing Company, for a decree in accordance with the mandate of the Circuit Court of Appeals, it is now ordered, adjudged and decreed that the claim of Great Lakes Towing Company for thirty-four thousand five hundred dollars ($34,500), with interest at the rate of 5 per cent. per annum from September 1, 1915, amounting as of this date to forty-one thousand eight hundred eighty-three dollars and ninety-eight cents ($41,883.98), with costs to be taxed, is allowed as a first, preferred and paramount lien against the funds now in the registry of this court arising from the sale of the steamer Eastland. Judgment is accordingly rendered in favor of said Great Lakes Towing Company in said amount of forty-one thousand eight hundred eighty-three dollars and ninety-eight cents ($41,883.98), with interest until paid at 5 per cent., and also for costs to be taxed, and the clerk of the court is directed to pay the amount of said judgment to said Great Lakes Towing Company or to its proctors of record from said funds now in the registry of this court.

It is further ordered upon the application of the said Sherwood S. Mattocks, on his own behalf and on behalf of other life salvors, by their proctors, that payment of the amount of said judgment is hereby stayed for a period of fifteen days in order to allow an appeal from this decree. And it is ordered that on any such appeal, the bond shall be in the sum of twenty-five hundred dollars ($2,500), to be approved by this court.

And it is further ordered that in the event bond

be not filed within fifteen days from the date of this decree, the clerk shall make payment of the judgment as aforesaid.

(Enter) CARPENTER,
Judge.

23d Dec., 1919.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

No. —, Original.

EX PARTE THE UNITED STATES, PETITIONER.

MOTION FOR LEAVE TO FILE PETITION FOR WRITS OF MANDAMUS AND PROHIBITION.

The petitioner in the above entitled matter respectfully asks the Court for leave to file the petition presented herewith wherein it asks for a writ of mandamus directed to the Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania, and to said Court, directing him to vacate an order quashing an indictment presented in the March, 1916, Term of said Court against one Josiah V. Thompson for violation of the banking laws of the United States, and to restore said indictment to the files of said Court, and wherein it asks for a writ of prohibition against the Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania, directed to him and to the Court, prohibiting him from striking said indictment from the files of said Court for the reason that the presentment thereof by the grand jury did not receive his approval and consent.

THE UNITED STATES,
By ALEX C. KING,
Solicitor General.
ROBERT P. STEWART,
Assistant Attorney General.

140273—19——1

Now comes the United States by Alex C. King, its Solicitor General, and respectfully states as follows:[1]

I.

During the November Term, 1915, of the District Court for the Western District of Pennsylvania, a grand jury of the United States, duly empaneled and in session, presented that one Josiah V. Thompson had within said Western District wilfully misapplied certain of the moneys, etc., of the First National Bank of Uniontown, Pennsylvania, had wilfully made false entries on the books of said bank, and had sworn falsely in connection with certain reports to the Comptroller of the Currency, these violations of law having come to the knowledge of the grand jury through the testimony of witnesses before them. The grand jury, having presented the matter to the Court, requested that the Court inst uct the District Attorney to lay before the grand jury bills of indictment more particularly and at length setting forth said violations of law (Rec. 5).

Thereupon the following order was entered by the Court:

> And now, to-wit, February 4, 1916, the foregoing presented in open court, and ordered to be filed; and it is further ordered

[1] The references in this petition, except where otherwise noted, are to the printed record in *United States* v. *Josiah V. Thompson*, No. 250 on the docket of the October, 1919, term of this Court.

> that the United States Attorney prepare and present an indictment to the grand jury, as recommended. (Rec. 5.)

Thereupon the United States Attorney presented to said grand jury a bill of indictment against said Thompson containing forty-seven counts, thirty of which counts charged the following offenses, viz., wilful misapplication, abstraction, and embezzlement of the funds of the said First National Bank of Uniontown, Pennsylvania; but the said grand jury ignored the said thirty counts charging as aforesaid and refused to return the same as a true bill, whereupon the United States Attorney withdrew from the consideration of said grand jury the said thirty counts and submitted to them only the first seventeen counts of said proposed bill of indictment (Rec. 87, 94).

Thereupon, on February 8, 1916, and in the November, 1915, Term of said Court (Rec. 30), said indictment containing seventeen counts was filed against said Thompson in accordance with the said presentment and order of Court (Rec. 8–30). Counts one to eight, inclusive (Rec. 8–6), charged that Thompson, being president of the First National Bank of Uniontown, Pennsylvania, wilfully certified certain checks when the drawer thereof did not have funds on deposit at the time equal to the amount of the check, an act prohibited and punished by Section 5208, R. S., and Section 13 of the Act of July 12, 1882, c. 290, 22 Stat. 166. The checks particularized in the several counts were all checks of William

S. Craft, Treasurer of Fayette County, Pennsylvania. Counts nine to eleven, inclusive, charged Thompson with making false entries on the books of the bank in respect to its assets, in violation of Section 5209, R. S. Counts twelve to fifteen charged him with making false entries in the reports of the bank to the Comptroller of the Currency, counts twelve and thirteen as to the items already dealt with of the assets on the books of the bank, and counts fourteen and fifteen as to the borrowing of bonds. Counts sixteen and seventeen charged him with perjury in connection with his oath to these same statements to the Comptroller.

The Court's attention is respectfully invited to the fact that while the presentment of the grand jury aforesaid of the November Term, 1915, of said Court included among the matters which had been called to its attention and upon which it desired a formal bill of indictment the following, viz., that Thompson did wilfully misapply certain of the moneys, etc., of the First National Bank of Uniontown, Pennsylvania (Rec. 5), the bill as formally prepared and filed contained no charge upon this subject.

II.

The United States further respectfully states to the Court that on March 24, 1916, during the March Term of the said District Court for the Western District of Pennsylvania, a grand jury of the United States, duly empanelled and in session, presented to said Court that the said Josiah V. Thompson had

wilfully misapplied and abstracted certain of the moneys, etc., of the First National Bank of Uniontown, Pennsylvania, that their knowledge of the matter had come to them through witnesses sworn before them, and that they therefore requested the Court to instruct the United States Attorney to lay before them a bill of indictment, more particularly and at length setting forth said violations of law (Rec. 31). Whereupon the said Court caused the following order to be made:

> And now, to-wit, March 24, 1916, the foregoing presented in open court, and ordered to be filed; and it is further ordered that the United States Attorney prepare and present an indictment or indictments to the grand jury as recommended. (Rec. 31.)

At the time the above order was made by the District Court, the Court informed said grand jury that it had grave doubt as to whether the indictment was valid in view of the fact that the matters charged therein had been considered by a prior grand jury which had refused to vote a true bill in regard to them and that no action of the Court had been taken in regard to the presentment made by the grand jury of the March, 1916, Term, nor had the consent and approval of the Court ever been obtained thereto; but that, as the grand jury had completed its work, he would permit the indictment to be brought in but would reserve the question whether it should be and remain a true bill against the defendant.

Thereupon, and in accordance with this presentment and order of Court, on March 24, 1916, and in the March, 1916, Term of said Court, an indictment was filed against said Thompson (Rec. 32–77). It contained thirty counts. Counts one to twenty, inclusive, charged that Thompson, being President of the First National Bank of Uniontown, Pennsylvania, did wilfully misapply certain of the moneys, etc., of said Bank. (Rec. 32–66.) These counts all dealt with certain checks which, it was charged, Thompson unlawfully caused to be paid by the Bank. Counts one to twelve, inclusive (Rec. 32–52) dealt with checks drawn by William S. Craft, Treasurer of Fayette County, Pennsylvania. None of these checks, however, except that referred to in the second count (Rec. 34), was the same as the checks of the same drawer dealt with in the indictment of the November, 1915, Term of said Court. Counts thirteen to nineteen, inclusive (Rec. 53–66), dealt with certain checks of said Thompson, none of which had been referred to in the indictment of the November, 1915, Term of said Court. Count twenty (Rec. 66) dealt with the crediting to said Thompson's account of certain checks drawn to the order of said William S. Craft, Treasurer, none of which had been referred to in the indictment of the November, 1915, Term of said Court.

Counts twenty-one to twenty-nine (Rec. 68–75) charged that Thompson, being President of the First National Bank of Uniontown, Pennsylvania, did wilfully abstract and convert to his own use certain

moneys, etc., of the said Bank, a particular description of which was unknown to the grand jury.

Count thirty charged that Thompson, being President of the First National Bank of Uniontown, Pennsylvania, did wilfully embezzle certain bank notes belonging to said Bank.

The said indictment of the March, 1916, Term of said Court charged said Thompson with violations of the banking laws of the United States wholly different from those charged in the indictment of the November, 1915, Term of said Court and arising out of different transactions.

III.

(a) The United States further respectfully represents that thereafter the trial of said indictment of the March, 1916, Term of said Court was set during to-wit, the week beginning January 8, 1917, whereupon on December 29, 1916, the said Thompson filed a petition in said cause for a continuance because of the numerous charges contained in said indictment, and the serious nature thereof, and in order to give the petitioner time to prepare his defense thereto. A certified copy of said petition is annexed hereto marked Exhibit A. On December 30, 1916, a continuance was granted in accordance with this prayer.

On April 14, 1917, the said Thompson petitioned said Court for a further continuance, assigning the same grounds as in his previous petition. A certified copy thereof is attached hereto marked Exhibit B. On said April 14th a continuance was granted in accordance with said prayer.

The trial of said indictment having been continued to the November, 1917, Term of said Court, on October 8, 1917, said Thompson petitioned said Court for a further continuance to the May, 1918, Term of said Court for the same reasons given in his former petitions and so that additional time might be given him in which to prepare his defense to said indictment. A certified copy of said petition is annexed hereto marked Exhibit C. On October 16, 1917, a continuance was granted as prayed.

(b) Thereupon, on May 7, 1918 (Rec. 77), the said Thompson filed a motion to quash said indictment of the March, 1916, Term of said Court for the reason, among others, that the matters charged therein had been submitted to the grand jury of the November, 1915, Term of said Court, but that said grand jury had ignored said charges and had refused to return a true bill as to them; that these same matters had been submitted to the grand jury for the March, 1916, Term of said Court without the prior consent or approval of the said District Court for the Western District of Pennsylvania.

Thereupon, on May 8, 1918 (Rec. 79), the said Court granted said motion for the reason aforesaid, and ordered said indictment to be quashed.

Thereupon, on May 17, 1918 (Rec. 82), the United States filed a motion for a rehearing and to vacate said order quashing the indictment alleging that at the time the defendant's motion to quash was filed the statute of limitations had run as to the offenses charged in the indictment of the March,

1916, Term of said Court, and that said indictment had been prepared and filed in accordance with the presentment of the grand jury and the order of said Court. An answer was filed to this motion (Rec. 86), and the United States also filed a demurrer to the motion to quash (Rec. 93). A rule having been granted to show cause why a rehearing should not be had (Rec. 92), the said Court, on October 19, 1918 (Rec. 97, 98), refused said motion for a rehearing, overruled said demurrer and entered final judgment quashing said indictment of the March, 1916, Term of said Court, for the sole reason that the matters charged therein had been called to the attention of the grand jury for the November, 1915, Term of said Court which had refused to return a true bill in regard to them, and that their resubmission to a grand jury of the March, 1916, Term of said Court was without the knowledge, consent or approval of the said District Court. An opinion was filed (Rec. 94–97) setting forth the reasons of the Court at length, to which reference is hereby made.

Thereupon, on October 26, 1918 (Rec. 99, 100), the United States sued out a writ of error to said judgment under the Act of March 2, 1907, c. 2564, 34 Stat. 1246, and said writ was docketed as number 755 of the October, 1918, Term, number 250 on the October, 1919, Term of this Court.

Thereupon, the said Thompson, defendant in error in said cause, moved to dismiss said writ for lack of jurisdiction in this Court in that the said judg-

ment quashing said indictment was not an order or decision as to which said statute of March 2, 1907, gives the United States a right to a writ of error.

Your petitioner alleges that said judgment of said District Court quashing the indictment of the March, 1916, Term because, though duly charging violations of the banking laws of the United States, and presented by a grand jury of the United States duly empaneled and sworn to inquire into such violations, it had not received the prior consent and approval of said Court, was wholly without warrant of law, and exceeded the lawful jurisdiction of said Court.

Your petitioner further alleges that it is without adequate remedy at law to correct this unlawful exercise of jurisdiction by the said District Court unless this Court should decide that a writ of error lies under the Act of March 2, 1907, 34 Stat. 1246.

Wherefore your petitioner prays that an alternative writ of mandamus issue out of this Court to the Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania, and to said Court, directing that the said order of October 19, 1918, quashing said indictment of the March, 1916, Term against Josiah V. Thompson be set aside and that said indictment be restored to the files of said Court, or that the said Honorable Charles P. Orr, Judge of said Court, show cause on a day to be fixed by this honorable Court why this should not be done.

Your petitioner further prays that an alternative writ of prohibition issue out of this Court, directed

to the Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania, and to said Court, prohibiting him and it from striking said indictment from the files of said Court for the reason that the presentment thereof by the grand jury for the March, 1916, Term of said Court had not received his prior consent and approval, or that the said Honorable Charles P. Orr, Judge of said Court, show cause on a day to be fixed by this honorable Court why this should not be done.

Your petitioner further prays for all other and further relief which this honorable Court may deem proper in the premises.

THE UNITED STATES,
By ALEX C. KING,
Solicitor General.
ROBERT P. STEWART,
Assistant Attorney General.

CITY OF WASHINGTON,
District of Columbia, ss:

Personally came before me the subscriber Alex C. King, Solicitor General of the United States, who being duly sworn says that the foregoing petition is true in point of fact.

ALEX. C. KING.

Sworn and subscribed to before me, a Notary Public in and for the District of Columbia, this 1st day of October, 1919.

[SEAL.] W. MARVIN SMITH,
Notary Public, D. C.

My commission expires June 17, 1924.

Exhibit A.

The United States vs. Josiah V. Thompson. In the District Court of the United States for the Western District of Pennsylvania. No. 21 of November term, A. D. 1915, and No. 17 of March term, A. D. 1916.

PETITION TO CONTINUE TRIAL OF CASES.

To the Honorable, the Judges of the said Court:

The petition of Josiah V. Thompson, respectfully represents:

That he is the defendant in the above styled cases, and that the same are set for trial the week beginning January 8, 1917.

Your petitioner further represents, that—owing to financial embarrassments, on or about January 19th, 1915, the Court of Common Pleas for Fayette County, Pennsylvania, appointed receivers for all of your petitioner's estate, real and personal, for the purpose of conserving said estate in the interest of your petitioner's unsecured creditors, who are very numerous and whose claims against petitioner aggregate a very large amount.

That since the appointment of said receivers, your petitioner has been devoting his time in an effort to assist in making sale of coal lands, of which petitioner's estate very largely consists, in order that the proceeds arising therefrom might be applied, so far as possible, to the payment and discharge of the claims of his said unsecured creditors, whose needs are pressing and urgent.

That lately petitioner has been successful in helping to make sale of a large tract of said coal lands, but in order to consummate said sale, a large amount of work remains to be done, in the way of securing abstracts of and making title thereto etc. etc.—the detail knowledge of which is known only to your petitioner, and which will require several months of close application to complete the same.

That, in addition to the sale above referred to, other sales of coal lands are in contemplation, with reasonable assurance and expectation of making the same, and they likewise, have required and will require the time and attention of your petitioner for reasons similar to those above set forth; and if consummated, will result in still further discharge of petitioner's obligations to his said unsecured creditors.

That, by reason of your petitioner devoting his time and attention to said other matters, he has been compelled to neglect matters purely personal, and, as a consequence thereof, has had no opportunity to prepare his defense to the charges as contained in the indictments filed against him in the above styled cases.

WHEREFORE, by reason of the premises, and because of the numerous charges contained in said indictments, and the serious nature thereof, and in order to give petitioner time to prepare his defense thereto, he respectfully prays that the trial of said cases may be continued to May term of said Court next ensuing.

And he will ever pray, etc.

JOSIAH V. THOMPSON.

STATE OF PENNSYLVANIA,
County of Fayette, ss:

Josiah V. Thompson being duly sworn deposes and says, that he is the petitioner in the foregoing Petition, and that the statements of fact therein contained are true and correct, as he verily believes.

JOSIAH V. THOMPSON.

Subscribed and sworn to before me, this 29th day of December, A. D. 1916.

ELIZABETH M. LEONARD,
Notary Public.

Certified from the Record, this 27th day of Sept., A. D. 1919.

[SEAL.] J. WOOD CLARK, *Clerk.*

Exhibit B.

United States vs. Josiah V. Thompson. In the District Court of the United States for the Western District of Pennsylvania. No. 21, November term, 1915; No. 17, March term, 1916.

PETITION OF DEFENDANT TO CONTINUE TRIAL OF CASES.

To the Honorable, the Judges of the said Court:

The petition of Josiah V. Thompson, respectfully represents:

That he is the defendant in the above styled cases, and that the same are set for trial the week beginning May 7th, 1917.

Your petitioner further represents, that—owing to financial embarrassments, on or about January 18th, 1915, the Court of Common Pleas for Fayette County, Pennsylvania, appointed J. P. Brennan, W. G. Laidley and Andrew A. Thompson, receivers for all your petitioner's estate, real and personal, for the purpose of conserving said estate in the interest of your petitioner's unsecured creditors, who are very numerous and whose claims against petitioner aggregate a very large amount.

That since the appointment of said receivers, your petitioner has been devoting his time in an effort to assist in making sale of coal lands, of which petitioner's estate very largely consists, in order that the proceeds arising therefrom might be applied, so far as possible, to the payment and discharge of the claims of his said unsecured creditors, whose needs are pressing and urgent.

That lately, to-wit, on December 4th, 1916, petitioner was successful in helping to make sale of a large tract of said coal lands, approximating 12,000 acres in area, made up of a large number of small tracts formerly purchased by your petitioner, but in order to consummate said sale a large amount of work remained to be done in the way of securing abstracts of and making title thereto, etc., etc.,—the detail knowledge of which is known only to your petitioner.

That petitioner had confidently expected to have said sale closed and the money paid before the present time, but, by reason of certain litigation now pending in the Supreme Court of Pennsylvania, the closing of said sale has been delayed and there yet remains a large amount of work to be done in connection therewith, and to accomplish which petitioner believes his services are necessary and required.

That, in addition to the sale above referred to, other sales of coal lands are in contemplation, with reasonable assurance and expectation of making the same, and they likewise, have required and will require the time and attention of your petitioner for reasons similar to those above set forth; and if consummated, will result in still further discharge of petitioner's obligations to his said unsecured creditors.

That, by reason of your petitioner devoting his time and attention to said other matters, he has been compelled to neglect matters purely personal, and, as a consequence thereof, has had no opportunity to prepare his defense to the charges as contained in the indictments filed against him in the above styled cases.

WHEREFORE, by reason of the premises, and because of the numerous charges contained in said indictments, and the serious nature thereof, and in order to give petitioner time to prepare his defense thereto, he respectfully prays that the trial of said cases may be continued to November term of said court next ensuing.

And he will ever pray, etc.

JOSIAH V. THOMPSON.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Josiah V. Thompson being duly sworn deposes and says, that he is the petitioner in the foregoing Petition, and that the statements of fact therein contained are true and correct, as he verily believes.

JOSIAH V. THOMPSON.

Subscribed and sworn to before me, this 14th day of April, A. D., 1917.

[SEAL.] L. H. MATHEWS,
Notary Public.

My commission expires January 19, 1919.

Certified from the Record, this 27th day of Sept., A. D. 1919.

[SEAL.] J. WOOD CLARK,
Clerk.

Exhibit C.

United States vs. Josiah V. Thompson. In the District Court of the United States for the Western District of Pennsylvania. No. 21, November Term, 1915; No. 17, March Term, 1916.

PETITION OF DEFENDANT TO CONTINUE TRIAL OF CASES.

To the Honorable, the Judges of the said Court:

The petition of Josiah V. Thompson respectfully represents:

That he is the defendant in the above styled cases, and that the same are on the trial list for November Term, 1917.

That, as heretofore represented by petitioner to your Honorable Court, owing to financial embarrassments, on January 19, 1915, the Court of Common Pleas of Fayette County, Pa., appointed J. P. Brennan, W. G. Laidley and Andrew A. Thompson Receivers for all of your petitioner's estate, real and personal, for the purpose of conserving said estate in the interest of your petitioner's unsecured creditors, who are very numerous and whose claims against petitioner aggregate a very large amount.

That after the appointment of said Receivers, certain persons, to-wit: Alexander C. Robinson, A. Plumer Austin, James A. Campbell, Allen F. Cooper (since deceased), Alfred R. Hamilton, George S. Harah and Edward T. Hitchman, at the request of the holders of a large amount of both the secured and unsecured claims against your petitioner, agreed to act for them as a Creditors' Committee, working in conjunction with said Receivers for the common purpose of conserving petitioner's estate in the interest of his numerous creditors.

That from the time of the appointment of the said Receivers and said Committee, until April —, 1917, your petitioner, at the request of said Receivers and said Committee, had devoted his entire time to their service, in helping to further and carry into effect plans for the purpose of realizing upon the assets of petitioner's estate to the end that the claims against petitioner might be discharged and the urgent needs of his creditors thereby relieved.

That on April —, 1917, your petitioner herein, by his petition that day presented, and said Receivers and Committee by their petitions, or by their several counsel, represented at length to your Honorable Court that, by reason of the nature, character and extent of petitioner's estate and the vast amount of detail information required in connection therewith, and which information was known only to your petitioner, the said services of petitioner to said Receivers and said Committee had been and were valuable and necessary and were still required, and that by reason of petitioner so devoting his time and attention to said other matters, he had been compelled to neglect matters more purely personal, and, as a consequence thereof, had had no opportunity to prepare his defense to the charges contained in the indictments filed against him in the above styled cases.

That upon consideration of said petition and the representations of counsel, so as aforesaid presented on April —, 1917, the trial of said cases against your petitioner were continued to November Term, 1917, of said Court.

Your petitioner further represents: That by order or decree of the Supreme Court of the State of Pennsylvania, duly made and entered May 7th, 1917, his said Receivers were discharged on the ground that

their appointment was not authorized by law, and by reason whereof the work theretofore done by them, and as well that in contemplation and unfinished, was annulled, and, of necessity, had to be abandoned, thereby requiring much of the labor and work in connection with petitioner's estate to be begun anew and thus requiring and demanding, as petitioner believed, still further of petitioner's time and attention, to the further neglect of matters more purely personal to him.

That almost immediately following the discharge of his said Receivers, your petitioner went to St. Paul, Minnesota, in company with certain members of said Creditor's Committee, together with their secretary and attorney and there, from May 14th to the 19th inclusive, consummated an agreement with parties representing Louis W. Hill, President of the Great Northern Railroad Company, Samuel S. Thrope, President of Realtors Association of America, and James F. Sperry, and their associates, whereby an option for thirty days was to be given for the sale of petitioner's said estate.

That before said option could be given it was necessary to secure the consent thereto of the unsecured creditors of petitioner and that for a month or more following said meeting in St. Paul your petitioner's entire time was devoted to the business necessary and required to obtain the consent of said unsecured creditors.

That the consent of said unsecured creditors to the granting of said option was duly obtained and said option to purchase petitioner's estate was accordingly given, to expire August 15th, 1917, and before which time it was accepted according to the terms thereof.

That one of the terms of said option is that a three years' extension of the secured creditors shall be obtained, and your petitioner, believing it to be to the interest of all parties concerned, and because of his acquaintance with said secured creditors and the detail in connection with the many business transactions involved, and also because there seemed to be no one else who could attend to this particular matter, has been devoting much of his time to securing said extensions from the date of the acceptance of said option to the present, thereby requiring petitioner to visit many parts of the country, including St. Paul, Minneapolis, Chicago, Cleveland, Pittsburgh, Washington, Philadelphia, New York and many other widely separated places, all to the still further neglect of petitioner's more personal affairs.

Your petitioner still further represents that following the said discharge of his Receivers, involuntary proceedings in bankruptcy against him were begun in this court, to the end that he has lately been declared a bankrupt, thus necessitating upon his part the preparation and filing of a schedule of his property and effects, the listing of assets and claims, &c., &c., as required by law, and which schedules required much time and labor upon his part, by reason of the many thousand of items required to be noted in detail, the complete knowledge of which was known to no one but your petitioner, and all of which again required your petitioner's time, to the further neglect of the matters contained in the charges preferred against him in the foregoing cases.

WHEREFORE, by reason of the premises, petitioner having for said reasons neglected the preparation of his defense to the indictments filed against him, and

because of the numerous charges contained in said indictments and the very serious nature thereof, he respectfully prays that additional time be given him in which to prepare his defense thereto and that therefore the trial of said cases may be continued to the May Term of said Court next ensuing.

And he will ever pray, &c.

JOSIAH V. THOMPSON.

Certified from the Record, this 27th day of Sept., A. D. 1919.

[SEAL.] J. WOOD CLARK, *Clerk.*

STATE OF PENNSYLVANIA,

County of Fayette, ss:

Josiah V. Thompson, being duly sworn, deposes and says that he is the petitioner named in the foregoing Petition and that the statements of fact therein set forth are true and correct, as he verily believes.

JOSIAH V. THOMPSON.

Subscribed and sworn to before me this 8th day of October, A. D. 1917.

J. B. MCPHERSON,
Notary Public.

Certified from the Record, this 27th day of Sept., A. D. 1919.

[SEAL.] J. WOOD CLARK,
Clerk.

○

NO._____ORIGINAL.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

Ex Parte the United States, Petitioner.

MOTION FOR LEAVE TO FILE PETITION FOR WRITS OF MANDAMUS AND PROHIBITION, AND PETITION THEREFOR.

BRIEF CONTRA MOTION.

J. E. B. Cunningham,
R. M. Gibson,
W. C. McKean,

Attorneys for Josiah V. Thompson.

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IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1919.

NO. ....., ORIGINAL.

Ex Parte the United States, Petitioner.

Motion for Leave to File Petition for Writs of Mandamus and Prohibition and Petition Therefor.

BRIEF CONTRA MOTION.

STATEMENT OF FACTS.

This matter is before the court on motion of petitioner in the above entitled matter for leave to file petition for writs of mandamus and prohibition directed to Honorable Charles P. Orr, Judge of the District Court for the Western District of Pennsylvania and to said Court requiring him to vacate the order quashing the in-

dictment returned against Josiah V. Thompson, at No. 17 March Term, 1916, of said District Court, who is also the defendant in error at No. 250 October Term, 1919, of this Court, and to restore said indictment to the files, and prohibiting him from striking said indictment from the files of said court, "*for the reason that the presentment thereof by the grand jury did not receive his approval and consent.*" (See pages 1 and 10 of said motion and petition.)

This reason, as stated, is misleading and confusing. An examination of the motion for leave to file the petition for writs of mandamus and prohibition and of the petition itself, and a comparison thereof with the printed record at No. 250, October Term, 1919, of this Court, indicates that the learned counsel for the government seem to be laboring under a misapprehension with respect to the real ground upon which the Honorable Charles P. Orr, presiding in the District Court of the United States for the Western District of Pennsylvania, quashed the said indictment.

Therefore, because of this seeming misapprehension, and consequent misleading and confusing statement of the reason for quashing said indictment, as set forth in said motion, we deem it of utmost importance that a clear understanding first be had of the *facts* connected with the *finding* and *quashing* of said indictment.

Relying upon the printed record at said No. 250 October Term, 1919, of this Court, as authority, the facts are as follows: In February, 1916, a grand jury sitting at *Pittsburg*, Pa., *after having the matter given them in*

charge by said District Court, investigated, passed upon and ignored the very matters charged in the indictment found by a subsequent grand jury sitting at Erie, Pa., in March, 1916, and which indictment, containing the *identical* charges, so as aforesaid ignored, *and no more*, was quashed by order of said District Court, (Printed record, 94, 87; Petition for mandamus, 3,) and to which order of court the Writ of Error was taken in this case. (Printed record, 1.)

This second indictment, (the one quashed), was found a true bill and returned into court under the following method of proceedure: Notwithstanding the fact that said grand jury, sitting at Pittsburg, had ignored the identical charges against said defendant contained and set forth in said second indictment, the United States attorney, with whom was associated a special assistant to the Attorney General, *without the institution of any new proceedings in any way against the defendant, and without the knowledge or permission of the court, but of their own motion, and, as counsel for said defendant apprehends, in excess of their authority, and in derogation of the rights of the defendant*, brought to the notice and attention of said subsequent grand jury, so as aforesaid sitting at the city of Erie, the said identical charges against the defendant, which had been ignored as aforesaid by the prior grand jury sitting in the city of of Pittsburg, and proceeded to call witnesses before said grand jury, sitting at Erie, to testify against the defendant in support of said charges, so as aforesaid ignored, many of whom had been called and examined by said

Pittsburg grand jury. (Printed record, pages 87, 88.) The fact of the refusal of the first grand jury to indict the defendant for the *specific* offenses *and in the form* set forth in the second indictment was admitted by the United States attorney at the time of the argument of the motion to quash the second indictment. (Printed record, 95.)

Following this said action upon the part of the United States attorney, a presentment was made by the Erie grand jury requesting that a bill or bills of indictment be laid before it more particularly and at length setting forth the violations of law upon the part of the defendat as contained and set forth in said presentment. Accordingly on the same day an order of Court was made in conformity with the said request of said grand jury, and on the same day, a few minutes after, the second indictment, containing *only* the charges so as aforesaid ignored at Pittsburg, was presented to the Court. (Printed record, 31, 94, 95.)

At the time, however, when said Erie grand jury made said presentment the Judge expressed himself orally as follows:

> "This presentment presented by the grand jury is received by the court. The court *has grave doubts* as to whether an indictment founded thereon is valid. It would be invalid for this reason: A similar presentment was made by the last grand jury in this District and they were authorized to present a bill embracing the matters which appear in this presentment. The court authorized them to bring in a bill in accordance with their presentment.

"*This matter is again brought to this subsequent* grand jury without the knowledge or the permission of the court, *and the court is of the opinion that there should have been an application to this court for a resubmission of this matter to a new grand jury, or that some action of the court should have been taken in regard thereto.* However, inasmuch as the great weight of your duties in this regard has been done and inasmuch as you have made this presentment, the court will permit you to bring in a bill of indictment in accordance with the presentment, *the court reserving,* however, the *legal question* as to *whether or not* the indictment so brought in should be and remain a true bill against the defendant." (Printed record, 95.)

Thereafter the trial of this case and the case at No. 21 November Term, 1915, of said District Court, likewise charging defendant with violations of the banking laws, were continued on petition of defendant, as set forth in said petition for writs of mandamus and prohibition.

On May 7, 1918, both of said cases were called for trial, and defendant for the first time was required to plead. Thereupon, before plea pleaded or jury sworn, the defendant filed motions to quash both of said indictments. (See Printed Record page 77 for motion to quash the second or Erie indictment. The motion to quash the first or Pittsburg indictment, was not included in the Printed Record.) On May 8, 1918, the court overruled the motion to quash the first or Pittsburg indictment, but sustained the motion as to the second or Erie indictment and ordered it quashed, assigning as a reason therefor as follows:

"It appears that the matters embraced within that indictment were the *identical matters* submitted to the grand jury which found the former bill at Pittsburg, in addition to the matters specially charged in that bill. (Pittsburgh bill.)

"It appears further that those matters were not included in the indictment at the Pittsburg term, and *were not deemed by that grand jury to be charges for which the defendant should be brought to trial.* THE RE-SUBMISSION of those matters to the later grand jury at the Erie Term *was without the knowledge or approval of the court.* THE RE-SUBMISSION of the offenses against the government to a new grand jury is *a matter of highest prerogative, and is always subject to the control of the court, and, in proper cases, always granted by the court.* * * *"

"I am satisfied that the matters in connection with the finding of the indictment at Erie were *more than irregularities*, and therefore, I must sustain the motion to quash the indictment found at Erie, * * *" (Printed Record, pages 79 and 80.)

Again in the opinion of the court, sur motion by the United States attorney for a re-hearing of the motion to quash, the reason for quashing this indictment is repeated in the following words:

"The *substantial* reason for sustaining the motion to quash the indictment, as expressed at the time of such ruling, was that the proceedings, taken as they were without the knowledge, approval, or direction of the court having charge of the grand jury and their proceedings, *were in violation of law* and *tended to impair the substantial rights of the defendant* * * *

"*The re-submission* of a case to the same or a new grand jury *is often allowed by the court*, but *only* upon some showing that such re-submission should be made in the interest of justice. *To permit the submission of the same matter to repeated grand juries*

until one is found favorable to pressure of the prosecution would be in violation of the substantial rights of citizens." (Printed record pages 95 and 96.)

For the reasons expressed in said opinion, the court ordered and directed that final judgment be entered on said motion to quash, which judgment was accordingly entered October 19, 1918. (Printed Record, pages 97 and 98.)

Thereafter, to wit, on October 26, 1918, the plaintiff in error sued out the Writ of Error upon which this matter first came into this court. (Printed Record, page 99.)

Another allegation of fact on page 7 of the petition in this matter might tend to mislead and confuse, to wit:

> "The said indictment of March, 1916, Term of said Court charged said Thompson with violations of the banking laws of the United States wholly different from those charged in the indictment of the November 1915 Term of said Court and arising out of different transactions."

This statement has a tendency to confuse, unless it be kept clearly in mind that by the "indictment of the November, 1915, Term" is meant the indictment *as returned and containing only seventeen counts*, and *not* the indictment *as originally presented* to the Pittsburg grand jury and *containing forty seven counts*.

With this understanding the statement becomes immaterial.

The *material* thing is that *the thirty counts* contained *in the Erie indictment are the identical thirty counts* which *the Pittsburg grand jury ignored*. As a matter of course

they are different from the seventeen counts now contained in the Pittsburg indictment.

That *every charge* contained in the *Erie* indictment was *considered and ignored* by the *Pittsburg* grand jury is perfectly clear from the findings of the court and the admission of counsel for the government. (Printed Record 79-80; Petition 3.)

Findings of Fact:

If the foregoing is a correct statement of the facts occuring in connection with the finding of the second or Erie indictment, it is submitted that the following are proper conclusions therefrom:

1. The matters submitted by the United States attorney to the grand jury at Erie, in March, 1916, resulting in the finding of the second indictment, were the *identical* matters *and no more*, that were *ignored* by the Pittsburg grand jury in February, 1916.

2. That the United States attorney submitted said matters, (*knowing* them to be the identical matters) so as aforesaid ignored, to said Erie grand jury without the knowledge, approval or direction of the court, having charge of said grand jury and their proceedings.

3. Notwithstanding the fair and timely warning by the court, at the time the presentment was made upon

which said Erie indictment was based, (to wit, March 24, 1916,) that he had *grave doubts* as to whether an indictment founded thereon would be valid, and although, upon said indictment being returned, to wit, the same day, the court, while receiving it, *reserved the legal question* as to whether or not the indictment so brought in should be and remain a true bill against the defendant, the United States Attorney *allowed more than two years to elapse*, during which time *no steps were taken on behalf of the Government* to correct the error, pointed out by the court at the time the indictment was received, or in any way to remove the doubt with respect to the validity of said indictment.

4. That the reason of the court for quashing said indictment, *as assigned in the motion* for leave to file petition for writs of mandamus and prohibition, namely, "that the presentment thereof (the indictment) by the grand jury did not receive his approval and consent," *is incorrect*, misleading and confusing.

5. *That the true reason* for quashing said indictment, as is plainly shown by the opinion of the court, was, that the United States attorney, in instituting the proceedings before the Erie grand jury, without the knowledge, approval or direction of the court having charge of the grand jury and their proceedings, *exceeded his authority*, and in so doing *clearly violated the substantial rights of the defendant*.

ARGUMENT.

Certainly the right of the Government to a writ of mandamus to compel the performance of a *ministerial* act or duty is not involved in this application, and need not be considered in this argument.

If, however, the order of the District Court, quashing said indictment, "was without any warrant of law and in excess of its lawful jurisdiction," as claimed by counsel for Petitioner, *then*, although the motion of the defendant in error (at No. 250 October Term, 1919, of this Court) to dismiss the writ of error should prevail, because the judgment complained of does not come within the provisions of the Act of March 2, 1907, the writs of mandamus and prohibition should nevertheless be allowed, under the decision of this Court IN RE GEORGE F. HARDING, petitioner, 219 U. S. 363, and the cases therein distinguished and reconciled,—the *exceptional* rule as decided in VIRGINIA vs. RIVES, 100 U. S. 313, and reafirmed in VIRGINIA vs. PAUL, 148 U. S. 107, applying, *instead* of the *general* doctrine as laid down IN RE GEORGE F. HARDING, supra.

In the case of VIRGINIA vs. RIVES, supra, repeated with approval in the HARDING case, supra, the Supreme Court state said *exceptional* rule in the following words:

> "It (the writ of mandamus) does not lie to control judicial discretion, *except* when that discretion has been abused, *but it is a remedy* when the case is *outside* of the exercise of this discretion and *outside*

> the jurisdiction of the court or officer to which or to whom the writ is addressed."

In the Harding case, commenting on the decision in the Rives case, the Court further say: "It is obvious from the opinion of the court and the concurring opinion that jurisdiction over the cause was taken *because of the extraordinary abuse* of discretion disclosed by the power attempted to be exerted, and the confusion and disregard of constitutional limitations which the asserted power implied * * * *"

But if the order or judgment of the court below in quashing the indictment *was not extra-judicial*, and although said defendant's motion to dismiss the writ of error should prevail for want of jurisdiction, and *even though* this court might question the soundness of the order or judgment in quashing said indictment, *yet*, the alternative writs of mandamus and prohibition *should not be allowed*, because, to be of avail to the Petitioner, they would have to be made absolute or peremptory, and that would be to substitute the judgment of this court for the judgment of the court below in a matter wherein it is without jurisdiction so to do. This position has its foundation in reason, and is in accord with the decisions of this court. EX PARTE GREUTTER, 217 U. S. 586; IN RE POLITZ, 206 U. S. 323; EX PARTE BURTIS, 103 U. S. 238; BARNES v. LYON, 187 Fed. 881, wherein it is affirmed that the writ of mandamus

> "will not lie to review, reverse, or alter affirmative judicial action of the court, *had in the exercise of legitimate jurisdiction*."

It is also said in EX PARTE WHITNEY, 13 Pet. 404,

> "it (mandamus) will not lie to correct errors of judgment arising during the progress of the proceedings *within the jurisdiction* of the tribunal by annulling what has been done judicially, any more than it can be used to correct the judgment at the end of the trial, even though the error may operate harshly upon a relator."

> "If a court has acted, its action, no matter how erroneous, cannot be reviewed by mandamus, and the court cannot be compelled to change its action or exercise it in a different manner, irrespective of whether the party has another remedy." Kimerlin v. Comrs. Five Civilized Tribes, 10 Fed. 653; Lyle v. Cass, Cir. Judge, 157 Mich. 33, 121 N. W. 366; People v. Wayne, Cir. Judge, 1 Mich. 359; Stand. Cyc. Proc. Vol. 19, page 100.

THE TRUE PRINCIPLE: In Wiley v. Judge, 29 Mich. 487, 495, Stand. Cyc. Proc. Vol. 19, page 192, the court (per Christiancy, J.) held the *true principle* to be, "that if the inferior court has acted *judicially* in the determination of a question of fact, or a question of law, at least if *the latter* be one properly arising upon the case itself, and not some collateral motion or matter,—that is, if the case or proceeding before it, upon the facts, raised the particular question in such a shape as to give it *the power judicially* thus to determine it,—*then* such determination, *however erroneous, cannot be reviewed*, nor can any order the court may have made, or action it may have taken in consequence of it, be disturbed or reversed or reviewed by mandamus * * *. *But*, if the case before the lower court does not, upon its facts or the evidence, legitimately raise the question of law or fact it has assumed to decide, so that the court could act judicially upon it,

or so as to give the court the power judicially to make the decision it has assumed to make, *then* its action is not properly judicial, and no assumed determination of it, nor any order resting upon it, will preclude the remedy by mandamus, *provided* the case be in other respects a proper one for that species of remedy."

The Question for Determination:

The question for determination is, therefore, was the order of the court below in quashing the indictment *extra-judicial?* Counsel for the defendant therein contend that *it was not*, and in support thereof submit:

FIRST. The matters submitted by the United States Attorney to the grand jury at Erie, in March, 1916, resulting in the finding of the second indictment, being the identical matters, *and no more*, that were *ignored* by the Pittsburg grand jury in February, 1916, *and being so submitted without the knowledge, approval or direction of the Court*, having charge of said grand jury and their proceedings, was, under the attendant circumstances, an act upon the part of the District Attorney *without sanction of law, an usurpation of a power not a prerogative of his office*, and, consequently, an *extra-official* act upon his part, *and therefore void*. Wherefore, the consideration by the court of defendant's motion to quash, and his consequent action, in quashing the indictment so found, was *only the performance of a duty* imposed upon him by law, *discharged in the exercise of proper judicial discretion, clearly within the limits of the*

court's authority, and therefore *not* an extra-judicial act, and was in keeping with and justified by the following authority:

> "Although it is a generally accepted rule that, unless it is provided to the contrary by statute, a charge which has been ignored by one grand jury, or in respect to which it has returned 'not a true bill', *may be* again submitted to and considered by another grand jury, *yet* it is said that the power which is vested in the court to order such a re-submission *should be exercised with a considerable caution*. So it is declared in this connection in a case in New York that 'while the court has power to permit the charges to be again submitted to the grand jury *such power should be sparingly and discriminatingly used. It is a practice that ought not to be encouraged*, nor granted *pro forma*. *The court should act judicially, and permit such re-submission only when facts are presented which justify such action.*'" JOYCE ON INDICTMENTS Sec. 120, citing PEOPLE vs. NEIDHART, 71 N. Y. Supp. 591, 15 N. Y. Cr. R. 475, holding that the court will not direct that a charge be re-submitted merely on the affidavit of the district attorney that he is of opinion that the grand jury misunderstood the law, and that if the charge is again submitted an 'indictment may be found'. Judge FOSTER said as to this: "*To permit the District Attorney, because he does not agree with the grand jury, and seemingly for no other reason, to continue resubmitting complaints to other grand juries until one can be found to agree with him, is to place in his hands a power of persecution which I am unwilling to sanction*, and which I am quite sure he does not desire. The verdict or decision of the grand jury is justly entitled to great weight and should not be lightly brushed aside or ignored."

A foot note to the foregoing quoted section of JOYCE

ON INDICTMENTS says: "If a man be committed for a crime, and no bill be preferred against him, *or if it be thrown out by the Grand Jury*, so that he is discharged by proclamation, he is still liable to be indicted, though the sending up of a second bill, after an ignoramus, *is an extreme act of prerogative, subject to a revision of the court*. WHARTON'S Cr. Pl. and Pr. Sec. 446, quoted in UNITED STATES vs. MARTIN, 50 Fed. 918.

In the case of COMMONWEALTH v. GREEN, 126 Pa. St., 531, where the grand jury had made a presentment and upon which presentment the District Attorney, *by leave of the Court*, sent before the Grand Jury an indictment based upon this presentment, and a true bill was returned, the Court below, on motion, quashed the indictment. Upon writ taken by the District Attorney, the matter came before the Supreme Court of the State where the action of the lower Court was affirmed.

MR. JUSTICE CLARK, in delivering the opinion of the Supreme Court, (after discussing the ordinary and the three several extraordinary methods of instituting criminal actions,) said:

> "The *presentment* therefore, as a basis for the indictment, *was wholly insufficient*, for the reason that it was *not found* by the grand jury, upon *their own knowledge and observation* * * *
>
> "What was done in this case is just what is done in all cases of a presentment by the Grand Jury: the presentment was placed in the hands of the District Attorney, by the Court, with instructions to put it in the technical form of an indictment, signed by the Commonwealth's officer, for the formal action of the Grand Jury, and upon return

thereof, the defendant was liable to process, and was required to plead."

"It is certainly true, however, as we have said, that the District Attorney, in an *exigency*, or when the occasion seems to require, may prefer an indictment before a grand jury *without* a previous binding over or commitment, but this power is *only* to be exercised under the circumstances stated for the public good, and *then* the proceeding is always under the supervision and control of the Court * * * "

"*It is plain that the exigency of this case did* not require, or even appear to require, this extraordinary exercise of power, on the part of the district attorney. *There was no emergency, no demand of haste, no effort to escape, not even any appearance of an escape; there was no public good to be subserved, indeed there was absolutely nothing to call for this unusual method of procedure, and it is not pretended there was. It is true* that in this case the *indictment* was prepared and sent to the grand jury *'with leave of the court,'* but the court, upon being informed that the *presentment was not made upon the knowledge and observation of the grand jury*, and was therefore no presentment at all, had a right to revoke that leave, and to quash the bill, which was done."

SECOND. The proceedings instituted by the United States Attorney before the grand jury at Erie, resulting in the presentment to the court upon which the second indictment was based, *was in the nature of an inquisition.* That a grand jury does and always has possessed inquisitorial power is not denied; that, in the early day, it possessed the power, *on its own initiative*, without restriction, to set the machinery of this prerogative in motion is, perhaps, true; that in some of the states of the Union it still possesses and exercises this same power is

conceded (but not so in Pennsylvania.) As a general proposition, however, we believe it to be true that grand juries in most jurisdictions, have long since been deprived of this initiative, and can only exercise their inquisitorial powers, *when directed so to do by the court having charge of their proceedings.* It is further submitted that neither the King's Counsel, nor the Attorney General or District Attorney, under our system of criminal law, *ever possessed the power* of setting in motion inquisitorial action by a grand jury. For so long a time do we believe this has been the law governing the action of grand juries, in this particular, that it has become elemental, and, therefore, *the action of the United States Attorney in instituting the said proceedings* before the Erie grand jury, *without* the knowledge, consent, approval or direction of the court was *extra-official;* and, therefore, *void*, and the court discharged but a plain duty, clearly within the limits of its power, in quashing the indictment based upon a proceeding so clearly illegal.

We think the following expresses the present day generally accepted view as to the exercise of the inquisitorial power of a grand jury, and likewise supports the foregoing proposition:

> "* * * There can be no question about the fact that, at common law, a grand jury was charged especially with inquisitorial duties, and where there is probable cause to suspect that the law had been violated, they were considered bound by their oaths to institute inquiry and investigation. They had *originally* 'the right to send for witnesses and have them sworn to give evidence *generally*, and to found presentments on the evidence of such witnesses'

* * * *. But though it is the duty of the grand jury to investigate criminal offences, *they do not possess power to summon witnesses before them for the purpose of ascertaining whether there has been any violation of the law, where no specific violation of any law, is known. The grand jury cannot*, for the purpose of finding an indictment, summon persons before them to give their general knowledge of the violation of the penal laws *when the fact to be investigated has not been discovered by the grand jury or any member thereof, and when that body knows* nothing of the person connected with or guilty of the offence. In this connection it is said in a case in Georgia: 'It is true that each member of the grand jury is under a solemn obligation to make diligent inquiry and to present truly all infractions of the criminal law, which may be given the body in charge, or may come to the knowledge of any of them touching the service in which they are engaged. That the powers of the body are inquisitorial to a certain extent is undeniable; *yet they have to be exercised within well defined limits.* Anything they can find out by their own inquiry and observation is legitimate and praiseworthy, *but they have no authority to force private persons or the officers of the courts to disclose to them who may have violated the public laws, and the names of persons by whom such infractions* can be established;—in short, to make every man a spy upon the conduct of his neighbors and associates, and compel him to violate the confidence implied in holding social intercourse with his fellows by forcing him to become a public informer. Such an exercise of power would be in derogation of general principles essential to the enjoyment of rights regarded as sacred and paramount in the intercourse between man and man; and these rights have been carefully guarded, not only by the spirit of our law, but by its express enactments.' JOYCE ON INDICTMENTS, Sec. 87, citing STATE v. WILCOX, 104 N. C. 847, per AVERY, J.; WHARTON ON CRM. LAW, Sec. 457.

Note h; STATE v. BROWN, 62 S. C. 347; IN RE LESTER, 77 Ga. 143, 147; UNITED STATES v. KILPATRICK, 16 Fed. 768; LEWIS v. BOARD OF COMMISSIONERS OF WAKE CO., 74 N. C. 197. In this latter case it was declared, inter alia: "*a prosecuting officer has no right, of his own motion, or upon that of an officious, if not an intermeddling and malicious prosecutor, to send witnesses to the grand jury room,* merely to be interrogated whether there has been any violation of the criminal law, within their knowledge. *The law denounces such inquisatorial powers,* which may be carried to the extent of penetrating every household, and exposing the domestic privacy of every family. The repose of society, as well as the nature of our free institutions, forbid such a dangerous mode of inquisition. While the grand jury may thus proceed in prosecutions *instituted by themselves, upon their own knowledge and observation,* private individuals who may desire to prosecute offenders, have the right to inform the solicitor and have him *to frame a bill of indictment* against the accused, indorsing upon it the name of the prosecutor, as such, with such other witnesses as he may desire, *and send the bill with the witnesses to the grand jury.*"

By reason of the expression contained in the foregoing, to wit, "it is true that each member of the grand jury is under a solemn obligation to make diligent inquiry and to present truly all infractions of the criminal law *which may be given the body in charge,*" and because of similar expressions in other authorities, it seems pertinent to arrive at an understanding of what is meant by '*which may be given the body in charge.*'

So long ago as the time of JUDGE ADDISON, (September Session, 1792,) in a charge to the grand jury in explanation of the oath of a grand jury, he said:

> "The subjects, on which the deliberations of the grand jury may be exercised are either *such as are given them in charge*, or such as they know of their own knowledge. The regular way of *giving any matter in charge* to a grand jury, is by an accusation drawn up in a certain form, according to the nature of the offense, by the law officer for the prosecution of offences, and given to the grand jury, to be compared with the testimony of the witnesses to support it. *This is called an indictment*, or, more strictly speaking, a bill, and when the grand jury have found it true, then an indictment." ADDISON'S REPORTS, under head of "CHARGES TO GRAND JURIES," page 37.

WHARTON'S CRIMINAL PROCEDURE, Volume 2, 10th Edition, Sec. 1262, published in 1918, refers to this charge by Judge Addison and adds as a comment thereon;

> "As the learned Judge, (Addison), however, in the same charge, intimates an opinion that a grand jury is not to be permitted to summon witnesses before it, except under the supervision of the court, it would seem that *the inquisitorial powers* which he describes are to be *only exercised* on subjects which are *given in charge* to the jurors *by the court*, or rest in their personal knowledge."

THIRD. (A) The order or judgment of the court below, in quashing the indictment in question, *was entirely in keeping with the practice in such matters in the Pennsylvania Courts*, wherein the exercise of such supervisory power is recognized as a justifiable and proper act of judicial discretion. See COMMONWEALTH v. GREEN, 126 Pa. St., 531, Supra.

(B) Federal Courts will follow and be governed by the practice of state courts in matters not otherwise provided for in Federal procedure, where the same is not inconsistent with the Constitution and laws of the United States.

The discussion of and authority for these propositions (A) and (B) are set forth in our Brief on the Merits at No. 250 October Term, 1919, of this court, and for that reason further comment thereon is herein omitted.

FOURTH. Petitioner for the writs of mandamus and prohibition sets up the several continuances of the trial on said indictment, had at the instance of the defendant, thereby imputing such laches on his part, (as we apprehend), as would bar presentation and consideration of his motion to quash at the date upon which it was presented, regardless of any merit it might otherwise possess. (See Petition, p. 7.)

This, likewise we have answered in our brief on the merits. Suffice it here to say: This dilemma, if it be such, of the representatives of the government is of their own making. Even after the court had directed their attention to the irregularity and illegality of their procedure (Printed Record, p. 95), they persistently and almost defiantly ignored his fair and timely warning. This is too plain for argument.

Although the statute of limitations was running against the alleged offenses, the representatives of the government elected, despite the warning of the court, to

stand upon the position they had taken, and they should not now be heard to complain.

As was stated by the court in his written opinion, (Printed Record, p. 97):

> "No steps were taken on behalf of the Government to correct the error pointed out by the court at the time the indictment was received. The representatives of the Government at that time should have presented a petition and laid the grounds, if any, for an order of the court, permitting the resubmission of the matters to the grand jury, but no steps were taken by the Government in any way to remove the doubt with respect to the validity of the second indictment."

FIFTH. The further allegation in said petition, to wit, "that petitioner is without adequate remedy at law * * * * unless this Court should decide that a writ of error lies * * * * *", (See Petition, p. 10) is no reason why said writs of mandamus and prohibition should issue, if the Court below had jurisdiction to hear and determine the motion to quash, *even though this Court might differ with the Court below* in a determination of the question raised in said motion.

We think the decision of the Supreme Court of Pennsylvania in the case of COMMONWEALTH EX REL. BRACKENRIDGE v. THE JUDGES OF THE COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, as reported 1 Sargeant & Rawle's Reports, p. 187, (Pa. Supreme Court) is pertinent to this claim upon the part of petitioner.

This was a motion for a rule to show cause why a mandamus should not be issued against the Judges of the Court of Common Pleas of Cumberland County commanding them to proceed to the examination of Alexander Brackenridge, and if found competent, to admit him to practice as an attorney of their court,—the Court of Common Pleas having refused his application.

The Supreme Court denied the mandamus.

In the opinion denying the motion, the Supreme Court, inter alia, said:

> "It has been said, that for every wrong the law has provided a remedy, and that right and redress are correlative terms. This is true, as a general proposition, but cases often happen wherein its uniform correctness on principles of abstract justice may fairly be doubted. An instance is given by MARSHALL, Chief Justice, in 4 HALL'S LAW JOUR. 87. The most gross trespass done to a freehold can only be sued for in the county wherein the lands lie, and where the trespasser may never be found. The process of the Court must be executed in order to give it a right to try the cause, and the trespasser by keeping out of the county, is wholly dispunishable, unless the offence be attended with such circumstances as render it indictable. Thus in SHORTZ v. QUIGLEY, (1 BINN., 222.) it was held that a bill of exceptions does not lie to the opinion of the Court in receiving or rejecting testimony, on a motion for summary relief. Although the hardest cases may occur under such interlocutory decisions, and palpable injustice may ensue therefrom, yet Courts of error are not at liberty to review the same. The law confides the exclusive order and direction in such cases to the legal discretion and judgment of the Court having jurisdiction over the subject matter. And thus also, in BURD v. DANSDALE'S LESSEE, 2 BINN., 91, it

was adjudged, that this Court cannot take cognizance of a refusal in the Court of Common Pleas to grant a new trial. The Chief Justice there asserts that it was decided by the High Court of Errors and Appeals, at their last session, that a writ of error did not lie on the decision of the Supreme Court on a motion, unconnected with the trial of a cause. We can be at no loss to conceive many cases, wherein gross injustice may possibly be done to suitors, and yet they may be wholly remediless in any Court of Error and Appeal. And we, moreover, must keep in mind, that the existence of a right is always questionable, when the wisdom of the law affords no adequate remedy on its violation.

Upon both grounds which I have mentioned, I am constrained to deny the mandamus which has been applied for, although I am clear in my opinion on the construction of the rule."

SIXTH AND FINALLY. To summarize or recapitulate the foregoing: In determining whether or not the writs of mandamus and prohibition prayed for should issue, the question is, *not* what are the powers and prerogatives of a grand jury, *but*, did the United States Attorney have the right, under the circumstances, to depart from all recognized methods of instituting criminal prosecutions (both ordinary and extraordinary) and of his own motion, on his own initiative, without the knowledge, consent or approval of the court having charge of the grand jury and its proceedings, resubmit to a subsequent grand jury the identical charges ignored by a prior grand jury?

WHEREFORE, believing that the order or judgment of the Court below, in quashing the indictment in

question *was not* an abuse of discretion, and therefore, *not* an extra-judicial act, but, to the contrary thereof, *the motion to quash raised such a question as the court had full power judicially to determine*, and that, therefore, said order or judgment cannot be disturbed, reviewed or reversed by mandamus, we respectfully submit that the motion to file a petition for writs of mandamus and prohibition should be denied.

J. E. B. Cunningham,
R. M. Gibson,
W. C. McKean,

Attorneys for Josiah V. Thompson, Defendant in the Indictment at No. 17 March Term, 1916, District Court for the Western District of Pennsylvania.

IN THE

SUPREME COURT OF THE UNITED STATES

IN THE MATTER

OF

JAMES J. O'BRIEN.

PETITION FOR RULE.

JAMES J. O'BRIEN,

Petitioner in Person,

No. 275 Academy Street,

Astoria, New York.

SUPREME COURT OF THE UNITED STATES

IN THE MATTER

of

The application of JAMES J. O'BRIEN for leave to file petition for rule to Honorable Edwin L. Garvin and the Honorable Harland B. Howe, both District Judges of the United States.

And now comes the petitioner, James J. O'Brien in person, and moves for leave to file the petition for the writ of mandamus and of prohibition, hereto annexed and he further moves that a rule be entered and issue directing the Honorable Edwin L. Garvin and Honorable Harland B. Howe ,District Judges of the United States, to show cause why the writs of mandamus and of prohibition as prayed for in said petition, should not issue against them in accordance with the prayer of the said petitioner and why said petitioner should not have such other and further relief in the premises as may be just and equitable.

JAMES J. O'BRIEN,
Petitioner in Person,
P. O. Address,
275 Academy Street,
Astoria, New York.

To the Honorable Edward Douglas White, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The petition of James J. O'Brien, respectfully shows:

1. Petitioner would respectfully state that he is a resident and citizen of the State of New York and has heretofore instituted two suits in Equity in the District Court of the United States for the District of Connecticut, in both of which your petitioner was plaintiff and in one of which Walter B. Lashar, Percy P. Anderson, John J. Anderson and the Fairfield Park Land Co. were defendants and in the other, Percy P. Anderson, Walter B. Lashar and The Fairfield Park Building Company were defendants, all of whom are residents and citizens of the State of Connecticut, and that the said suits bore the File Numbers of 1516 and 1517 respectively.

2. That on the 21st day of November, 1919, the original bills were filed in the office of the Clerk of said District Court, and thereafter proof of services by the return of the Marshal making service upon all the defendants as shown by the docket of the court. That the time for filing of a plea or answer to the bills had expired on or before the 22nd day of December, 1919, the defendants failing to file a plea or answer and the time to file such plea or answer not having been enlarged by a judge of the court all the defendants were in default. That at no time since have any of the

defendants filed an answer or affidavit setting forth the merits of their defense, to the bills of your petitioner in said suits in equity above referred to. That the defendants entered no appearance on the merits of the causes.

3. On the 29th day of December ,1919, on motion duly coming on before him to be heard, Judge Garvin of the said District Court directed that decrees pro confesso be entered in both suits in favor of your petitioner. Your petitioner, then, all the defendants being in default, waived formal notice of a hearing of a motion to open the default of the defendants. Judge Garvin attempted to reopen their default, by granting the defendants until January 26, 1920, upon the payment of $50.00 costs to your petitioner, *"to plead or make such motions as they may be advised"*. This, your petitioner contends and respectfully alleges, Judge Garvin had neither the *power or discretion* to grant, as he is *affirmatively and injunctively* bound by the simple mandatory and positive language of Rule 17 of the Rules of Equity, passed by your Honorable Court to regulate the practice of the Courts of Equity of the United States.

4. The court did not order the defendants to file an answer and in the application to reopen the decrees pro confesso, none of the defendants presented any answer verified or unverified or any affidavits of merits. The defendants did not pay the costs to petitioner but on the contrary attempted to revive, on the 28th day of January, 1920, before Judge Howe of the District Court, motions to dismiss which had been made while they

were in default, and which motions were first denied by Judge Garvin in his original memorandum purporting to reopen the decrees pro confesso and subsequently modifying his denial of said motions, by making said denials "*without prejudice to refiling and arguing these motions after the causes are reinstated by the payment of costs*". This modification was arrived at by him after he had improperly and illegally received and considered at Chambers various letters, affidavits and communications received from the solicitors for the defendants, and from a President of a Bank which was not a party in any of the causes and which were received by him subsequent to the submission of the motions and after the close of argument and without notice to your petitioner or granting him an opportunity to be heard.

5. On the said 28th day of January, 1920, because the defendants had not filed any answers and had not at any time personally made any application to reopen the decrees pro confesso and furthermore had not paid the costs imposed by Judge Garvin ,and over thirty days having elapsed since the defendants were in default, a mition of your petitioner for final judgment came on before Judge Howe to be heard. This motion for final judgment was denied and privilege was given to the defendants to pay into court in legal tender on or before January 30th, 1920, the costs heretofore imposed by Judge Garvin, to be effective however as of the date of the receipt of an alleged check by the Clerk of the said District Court, but the receipt of which check, however,

does not appear on his docket although the Clerk verbally stated to the Court that it did so appear. *Judge Howe refused your petitioner's request to direct the defendants to file their answer in compliance with Rule 17.* The motions to dismiss were adjourned by his order sine die until the determiantion of an appeal of your petitioner to the Circuit Court of Appeals for the Second Circuit from the orders of both Judges Garvin and Howe.

6. Your petitioner prepared his appeals and after he had gone to the expense of printing his case and brief on appeal and had served copies of same on his adversaries, they made a motion to dismiss the appeal upon the ground they were made from interlocutory orders and therefore not cognizable on this ground, and thereafter on the 7th day of April, 1920,the Circuit Court of Appeals for the Second Circuit dismissed the appeals without a hearing on the merits.

7. Your petitioner is a man of the most modest means while some of the defendants are rich, influential and merciless in their treatment of him and although your petitioner has clearly indicated in his bills the embezzlements of one of the defendants, Percy P. Anderson, no attempt has been made to cooperate with your petitioner to protect the assets of the defendant corporations in which your petitioner is the largest individual stockholder. Your petitioner has persistently contended that the defendants cannot and dare not meet his allegations of wrongdoing under oath in any answer, affidavit or pleading without

subjecting themselves to a prosecution for perjury, so conclusive is the evidence of guilt in the possession of your petitioner.

8. Your petitioner's right to appeal having been denied, he has no adequate remedy either at law or in equity unless this court interferes by the writs of mandamus and prohibition to Judge Garvin and Judge Howe from illegally opening the decree pro confesso other than by the Rules of Equity provided and by mandamus to Judge Garvin and Judge Howe directing them to enter final judgment in favor of your petitioner in both bills and to vacate the void orders of said Judges Garvin and Howe heretofore made and entered in said two causes in equity. A copy of your petitioner's causes on appeal in the Court below is hereto annexed and made a part of this petition as if fully set forth herein.

9. Your petitioner respectfully asks leave to present arguments on the applications herein made; and he further asks that this Honorable Court direct the Clerk of the United States Circuit Court of Appeals for the Second Circuit to deliver to this Court, nine copies of the said record on appeal now on file with the said Clerk in the Circuit Court of Appeals for the Second Circuit, or that this Honorable Court direct that the original records from the District Court of Connecticut be produced before your Honorable Court.

Unless the application of your petitioner is granted the defendants may dissipate, deplete,

conceal and destroy the assets of the defendants' corporations whose rights of property your petitioner is desirous of protecting and conserving and with which acts your petitioner will be powerless to interfere. Furthermore, no command having been made that the defendants file answers and comply with Rule 17 of Rules of Equity, the suits of your petitioner never having been at issue, cannot be tried and determined. But under the plain language of said Rules of Equity, bearing as they do the valid force of Statute Law, plainly give to your petitioner a substantial right, namely, the right to judgment final and absolute against the defendants in both causes.

9. No previous application has been made for the relief herein sought.

WHEREFORE your petitioner prays that a rule be made and issue from this Honorable Court directed to Judge Harland B. Howe and Judge Edwin L. Garvin of the District Court of the United States directing the said Judges to show cause why a writ of mandamus should not issue commanding the said Judges to order the entry of final judgment in favor of your petitioner in both causes in equity and to vacate the illegal, improper and *void orders* of Judges Garvin and Howe purporting to reopen the decree pro confesso in violation of the *mandatory* and *injunctive language of Rule 17* of the Rules of Equity and that a writ of prohibition may issue from this Honorable Court forbidding Judge

Howe or Judge Garvin from taking any further proceeding in connection with the motions of the defendants to dismiss and for such and further relief in the premises as shall seem just and equitable.

And your petitioner will ever pray, etc.

Respectfully submitted,

JAMES J. O'BRIEN,
Petitioner in Person,
P. O. Address,
275 Academy Street,
Astoria, New York.

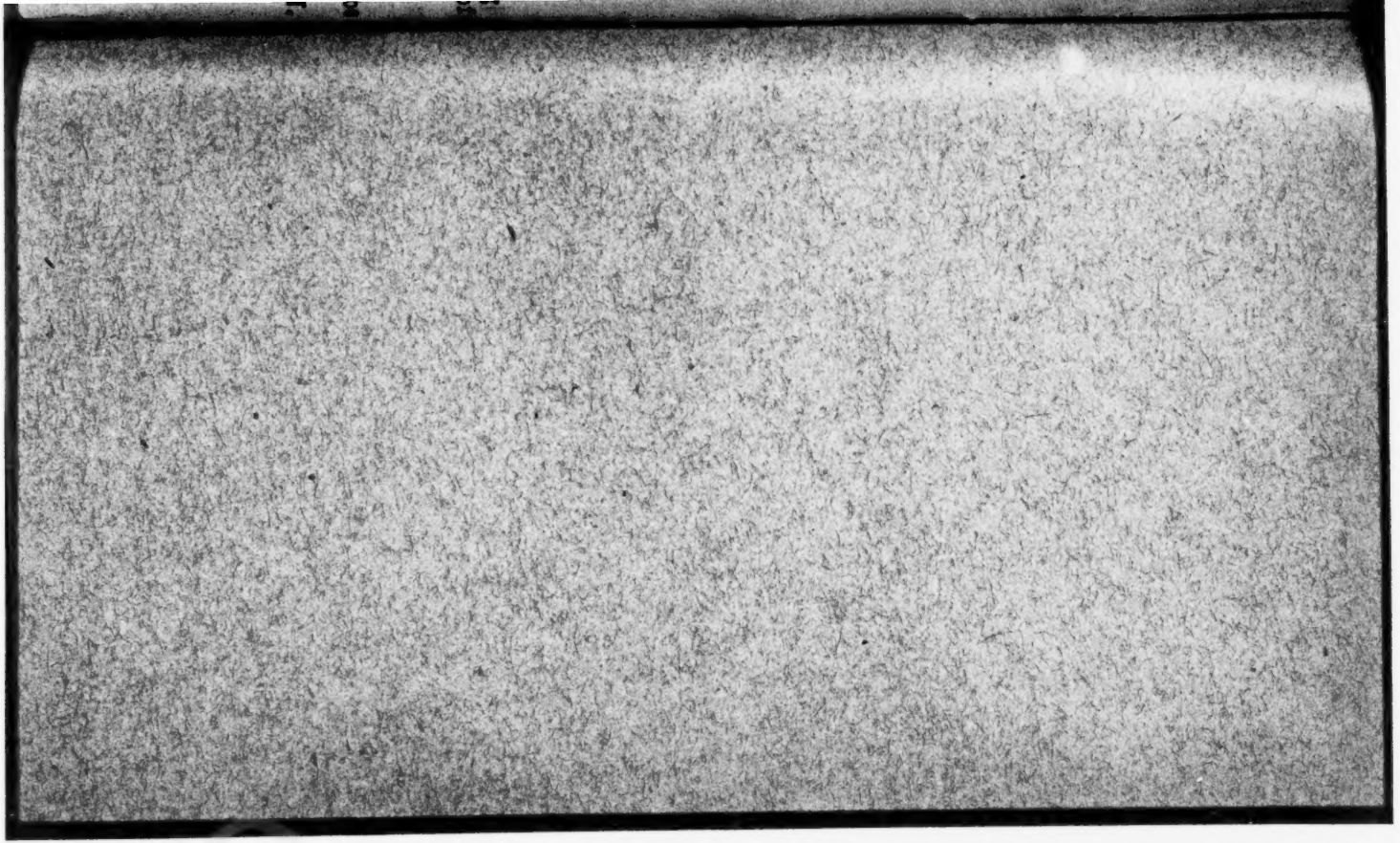
Dated at New York City, N. Y., this
17th day of April, 1920.

STATE OF NEW YORK SS
CITY & COUNTY OF NEW YORK

JAMES J. O'BRIEN being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition; that he knows the contents thereof that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to such matters he believes it to be true.

JAMES J. O'BRIEN.

Sworn to before me this 17th.
day of April, 1920.
JAMES E. WILKINSON, Notary Public,
Queens County #591 Certificate filed
in New York County, New York County
SEAL Clerk's No 280



OCTOBER TERM, [redacted]

No. [redacted]3

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

[redacted]EADING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY ET AL.

FILED DECEMBER 16, 1915.

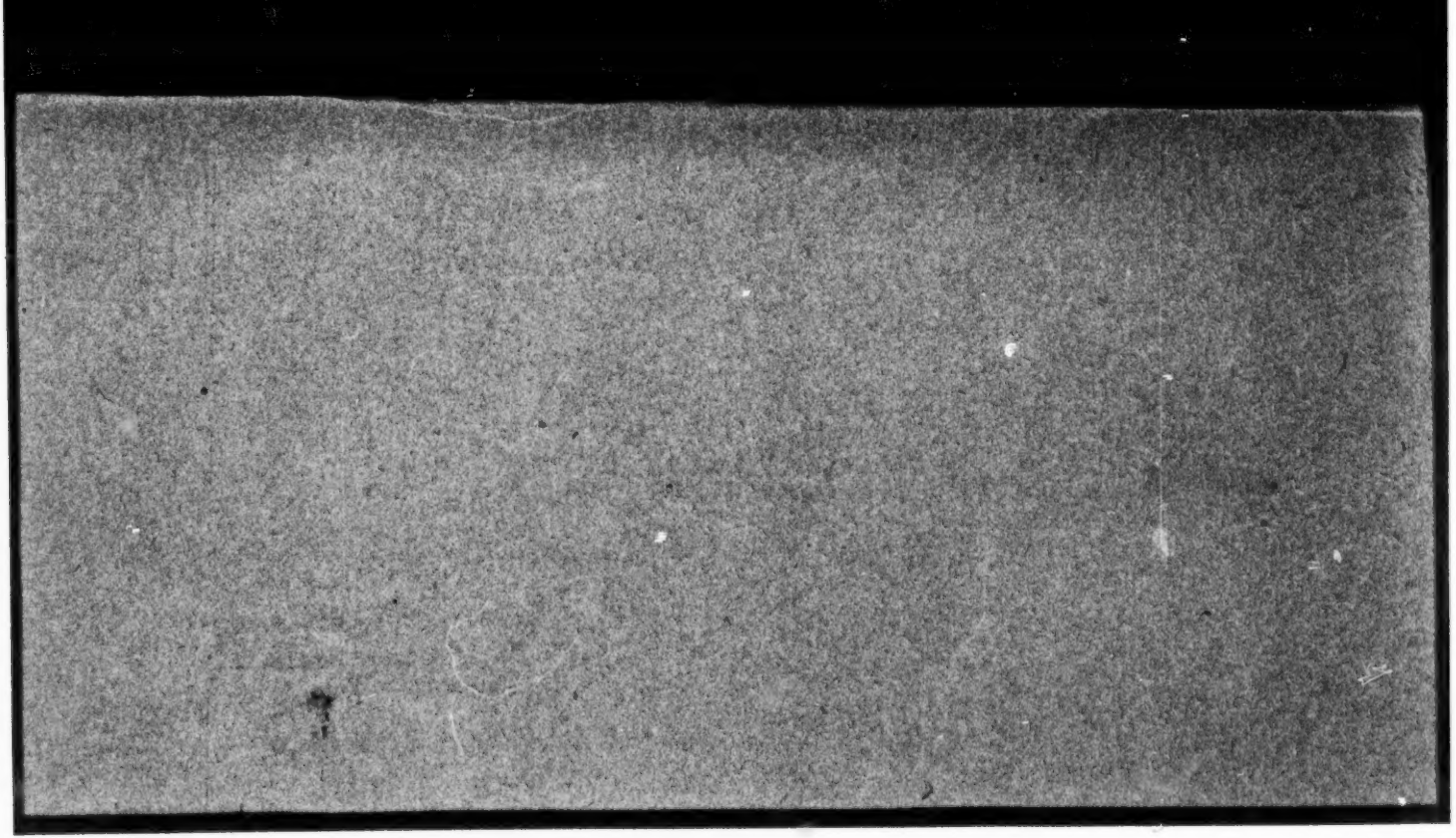
No. [redacted]14

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

FILED JANUARY 4, 1916.



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IN THE

District Court of the United States for the Eastern District of Pennsylvania.

SEPTEMBER TERM, 1913. No. 1095.

IN EQUITY.

The United States of America, Petitioner,

vs.

Reading Company, Philadelphia and Reading Railway Company, The Philadelphia and Reading Coal and Iron Company, The Central Railroad Company of New Jersey, The Lehigh and Wilkes-Barre Coal Company, The Lehigh Coal and Navigation Company, Wilmington and Northern Railroad Company, Lehigh and Hudson River Railway Company, Lehigh and New England Railroad Company, George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. DuPont, Daniel Willard, Henry P. McKean, and Samuel Dickson, Defendants.

Meeting held in the Board Room at the Reading Terminal, Twelfth and Market Streets, Philadelphia, Pa., Tuesday, March 17th, 1914, at 11 o'clock A. M.

Present—The Examiner. Messrs. Coudert and Kingsbury, Special Assistants to the United States Attorney General, for the Government. Messrs. Heebner, Reynolds, Turner, Beitler, Drinker and Marvel, for the defendants.

Jackson E. Reynolds, Esq., noted his appearance for the Wilmington and Northern Railway Company, as well as the other defendants for whom he has already noted his appearance.

David P. Marvel, Esq., noted his appearance for the Wilmington and Northern Railroad Company.

DEFENDANTS' EVIDENCE.

HENRY C. ZACHARIAS, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your profession or occupation? A. Assistant Engineer, Philadelphia and Reading Railway Company.

Q. How long have you been such? A. I do not know when I received that title; probably twelve or fifteen years ago. I have been connected with the railroad company a good many years.

Q. Are you entirely familiar with the lines of the Reading system? A. I am.

Q. Have you at my request prepared maps showing the lines of the Reading system? A. Yes.

Q. Are these maps marked Exhibits 1, sections 1, 2, 3 and 4, the result of that preparation? A. They are.

Q. Is the delineation of the Philadelphia and Reading Railway system on those maps accurate? A. Yes, sir.

Q. You have also delineated on that map the Wilmington and Northern Railway? A. Yes, sir.

Q. Are you familiar with that line? A. I am.

Q. Is the delineation of that railway accurate? A. It is.

Q. What method did you adopt for the delineation of the Lehigh Valley, the Pennsylvania, Delaware, Lackawanna and Western, The New York, Ontario and Western, the

New York, Susquehanna and Western, the Erie Railroad, the Wyoming Valley Railroad and the Delaware and Hudson Company lines? A. They are shown in black lines where they come reasonably close to our own lines. They are not shown all over the map, but just where they come in juxtaposition with the other lines.

Q. In delineating those other lines I have just mentioned in black, what data did you adopt for placing the lines on the map? A. These maps are built up from the United States Geological Survey sheets, on which they were delineated, and they have all been checked up, and I accepted that delineation as being correct, and wherever I had the opportunity, I verified it, and always found them to be correct.

Cross examination.

By Mr. Coudert:

Q. How do these maps differ from the United States map? Simply that you have traced out the lines of railway? A. No. As applied to the Philadelphia and Reading Railway system, the Wilmington and Northern system, wherever there have been any additions made since the Government printed them, or if there were any errors on them, they were corrected.

Q. So you simply took the Government map and brought it down to date according to your own ideas? A. According to the facts and not according to my own idea.

Q. Your idea of the facts? A. My knowledge of the facts.

Q. Where did you get those facts from? A. From my personal knowledge of the roads, as well as from our maps.

Q. You took the railroad map and then brought the Government map down to date by the additions to the reduced sheets of the railroad map down to date? A. Yes. I have an accurate working knowledge of all our own lines, because I travel them persistently.

Q. How many of those reduced maps are there that

you used? A. There are probably thousands of them. Whenever a change is made or suggested, we prepare maps showing what is proposed to be done, or what has been done, and make that as a record, and then from that we always work with a working map. That is how those changes were made.

Q. This map shows changes in the last how many years? A. Up to date. Whatever changes have been made since the Government sheets were published.

Q. They were published when? A. At various times. Each sheet has on its margin the various publications. In margining up those have been covered up in some instances. Some of them start in 1888, and some are only a year or two old.

Q. Is there anything on the map to show the difference between what the Government put there and what you put there? A. Not except by comparison with the United States Geological Survey Map.

Q. There would not be any other way of ascertaining? A. No. You might possibly find where I had made erasures, taking away the roads that were abandoned, taken up since the Government map was prepared. I have erased those. You could tell where that would be.

Q. Could you tell us in a general way how extensive those changes were? Were they very considerable? A. Part of the Mine Hill and Schuylkill Haven Railroad has been taken up from the foot of Gordon Plane to a place called Glen Dower, covering probably fifteen or twenty miles. Clark's Valley Railroad has been taken up.

Q. Mention the principal changes you made? A. Those are the principal ones that have been taken up. Then there have been several places where slight changes of alignment have been made for the purpose of improving the alignment. The Philadelphia, Harrisburg and Pittsburgh possibly, at a place called D. and N. Junction. On either side of that junction they eliminated some very bad curves and grades and straightened the road. That is all shown. That would be the more important ones. The other ones I cannot recall now.

Q. How about the Lehigh and New England road? Was that on the Government map? A. The Lehigh and New England road is delineated on there by us on information furnished by the Lehigh and New England road, and I think you will find somebody else who will testify to the accuracy of that.

The Government reserves the right, after examination and verification of the maps, to make any objection.

HOWARD VAN NESS, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your profession or occupation? A. I am assistant engineer of the Central Railroad Company of New Jersey.

Q. Referring to the maps mentioned in the testimony of Mr. Zacharias, have you at my request delineated the line of the Central Railroad Company of New Jersey on those maps? A. I have.

Q. Have you a personal knowledge of the lines and grades of the Central Railroad of New Jersey? A. I have.

Q. Is your delineation of that system accurate on those maps? A. It is.

Cross examination.

By MR. COUDERT:

Q. How did you make those maps? A. Mr. Zacharias had mounted the Government map first, and then I came to his office, and there he placed the Central Railroad lines in the same manner he had placed the Reading lines. I brought with me maps, and I also had personal knowledge of our lines.

Q. You brought the map up to date in accordance with your own Jersey Central maps? A. Yes, sir.

Q. Of which you had a collection in your office? A. Yes.

Q. Could you mention generally the principal additions you made to the Government map? A. We put on a number of small branch lines built since the Government maps

were made. The Atco branch, which has since been taken up, shows on the Government map, which we corrected. Parts of our system which come in the section of the country in which there are no Government maps. Those are the principal ones.

Q. No Government map, because they have been built since the Government maps were made? A. No; there never have been any Government maps as shown on section one.

Q. What parts are they? A. In the neighborhood of Mauch Chunk—east of Mauch Chunk.

Q. Do you know any reason for that, why they should not have been delineated? A. No; I do not.

(Government's counsel reserve the right, after examination and verification of the maps to make any objection.)

FRANK W. GILCREAST, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your professional occupation? A. Engineer of Maintenance of Way of the Lehigh and New England Railroad Company.

Q. Referring to the maps which have been already referred to in the testimony of Mr. Zacharias and Mr. Van Ness, have you, at my request, delineated the line of the Lehigh and New England Railroad on those maps? A. Yes, sir.

Q. Are you familiar with the line of the Lehigh and New England Railroad? A. Yes, sir.

Q. Is your delineation of that railway on those maps accurate? A. Yes.

Cross examination.

By MR. COUDERT:

Q. You made those maps by taking the Government map and adding all the railways that have been put on subsequently thereto? A. Yes, sir. We plotted our line and then reduced it by the pantograph to this scale.

Q. Your line did not appear on the Government map? A. It did not appear on quite a number of the sheets at all.

Q. On quite a number of the sheets? A. There were several sheets. There is a blank sheet there was no Government map at all for.

Q. None of the New England line appeared on any of the Government sheets? A. Yes, part of it, but only small parts.

Q. But a part of it having been subsequently to the last sheet, that part you plotted out? A. Yes, sir.

Q. In accordance with your own maps in the office of the company? A. Yes, sir. And also filled out whatever blanks there were through the slate territory where there is no Government sheet at all.

Q. That includes the Panther Creek, so-called? A. Yes, sir; that includes the Panther Creek.

Q. Do you remember whether the Panther Creek had appeared on the Government map? A. Yes. I think it had, and we made some additions to it.

Q. Tell us where the Panther Creek makes actual physical connections with other roads? A. At Hauto, it connects with the Central Railroad of New Jersey. At Tamaqua it connects with the Philadelphia and Reading. And also the Lehigh and New England.

Q. Those are all the connections that it makes? A. Yes, sir.

By Mr. Turner:

Q. When you said that the Panther Creek connects with the Lehigh and New England at Tamaqua, do you mean at that time? A. No; not at that time. There is no Panther Creek Railroad at the present day. I assumed that h meant when we built the road.

By Mr. Coudert:

Q. You meant the rails which were formerly called the Panther Creek Railway? A. Yes, sir.

Q. And which now belong to the Lehigh and New England? A. Yes, sir.

Q. But that part of the Lehigh and New England Railroad has those physical connections such as you have stated? A. Yes, sir.

By Mr. Reynolds:

Q. At the point Lehigh Gap, where you have delineated the crossing of the Lehigh and New England Railroad over the Central Railroad of New Jersey, what is the general physical characteristics of that crossing? A. There are bridges practically a hundred feet above the rail of the Central Railroad of New Jersey.

Q. The Central Railroad of New Jersey at that point running along the bank of the Lehigh River? A. Yes, sir.

Q. And the Lehigh and New England crosses from one mountain side to the other on the overhead bridge? A. Yes, sir. The Lehigh Gap.

Q. What is the nature of the clearance or crossing at Slatington of the Lehigh and New England over the Central Railroad of New Jersey? A. The bridge below Slatington is just about high enough to give the standard clearance for the two rails, probably twenty-five feet.

Q. Is there a physical connection between the two roads at either of those points I have named? A. No physical connection with the Central at either point.

By Mr. Coudert:

Q. Could such a physical connection be made? A. One could be made at the Slatington bridge.

Q. Without very great difficulty? A. It would be probably a mile long.

Q. You have testified as to the only physical connection between the formerly so-called Panther Creek Railway and these other railroads? A. Yes, sir.

Q. As to those other two points, Slatington and Lehigh Gap, physical connection would be possible? A. Physical connection would be possible at Slatington—nothing is impossible—I would not say it would be impossible—at Lehigh Gap we are up a hundred feet in the air, and it would be a very difficult proposition and very expensive.

Q. But not impossible to American engineers? A. No.

By Mr. Turner:

Q. Is it not a fact that the Lehigh and New England is now constructing a road at Lehigh Gap which will have physical connection with the Central Railroad Company

of New Jersey over the lines of the Chestnut Ridge Railroad? A. Yes, sir.

By Mr. Reynolds:

Q. The Chestnut Ridge Railroad is owned by whom? A. I cannot say.

Q. Is it owned by the Lehigh and New England Railroad? A. No.

Q. Or by the Jersey Central Railroad? A. No. As far as my knowledge goes.

By Mr. Coudert:

Q. Can you tell me how soon that connection that Mr. Turner spoke of will be completed? A. I would say fifteen to twenty days will have it in operation.

Q. Its completion then is imminent? A. The grading is all done.

(The Government's counsel makes the same reservation with reference to the maps referred to by this witness.)

J. Nelson Shaw, having been duly sworn, was examined as follows:—

By Mr. Reynolds:

Q. What is your profession or occupation? A. Engineer of Maintenance of Way of the Lehigh and Hudson River Railroad.

Q. Are you familiar with the lines of the Lehigh and Hudson River Railroad? A. I am.

Q. Did you at my request delineate the Lehigh and Hudson River Railroad upon these maps one, two, three and four? A. I did on map two.

Q. That is the only section that the Lehigh and Hudson River occupies? A. Yes, sir.

Q. Is your delineation of that line on that map accurate? A. I believe it is. According to the Government geological map.

Cross examination.

By Mr. Coudert:

Q. You merely took the geological map and made some modifications? A. Yes, sir.

Q. Those modifications being in accordance with maps in your own office? A. Only in such cases as the modifications would bring the maps up to date.

Q. Do you remember in a general way what those modifications were? A. On the Government maps a few of the sidings, runs away from the main line.

Q. Those were practicaly the only modifications? A. The only modifications.

Q. Where does the Lehigh and Hudson River Railway make physical connection with other railroads? At what points? A. At Belvidere with the Pennsylvania Railroad, at Andover Junction with the D. L. & W., at Sparta Junction with the New York, Susquehanna and Western, at Franklin Junction with the New York, Susquehanna and Western, at Gray Court with the Erie, and at Burnside with the Ontario and Western, and at Maybrook with the Central New England.

Q. Where does it connect with the Central Railroad of New Jersey? A. I do not know that we have a connection with the Central of New Jersey. We have trackage rights over the Pennsylvania Railroad from Belvidere to Easton, and there we connect with the Central Railroad of New Jersey.

Q. There your trains physically connect with the Central Railroad of New Jersey? A. Yes, sir.

Q. That is the only connection? A. Yes, sir.

Q. You have mentioned all the other connections with the other roads? A. Yes, sir.

(Government's counsel makes the same reservation with respect to the maps referred to by this witness.)

Mr. Reynolds offered in evidence as Exhibit No. 1, made up of sections 1, 2, 3 and 4, maps to which the previous witnesses have been testifying. This exhibit will not be printed as part of the record, but it will be in evidence. Defendant's counsel will offer later a mechanically, accurately reduced production to a smaller scale on precisely the same proportion, a composite of these f[illegible] sections of Exhibit No. 1.

[illegible]overnment's counsel reserves the right to make any

objection, after examination and verification, of the maps at a reduced scale.

MR. REYNOLDS:—I offer in evidence a sequence of papers from which I will read what I want, and submit to counsel for the Government, with the understanding that they may read into the record at any time any portions of these same papers which they may choose to put in.

The first is a duly certified copy of the certificate of organization under seal of the franchises and property of the Wilmington and Reading Railroad Company, forming a new corporation by the name, style and title of the Wilmington and Northern Railroad Company, as the same appears of record and remains on file in the office of the Secretary of the Commonwealth of Pennsylvania. This certificate, so far as the defendants care to introduce it, is as follows:—

"This is to certify, that under the provisions of an act of the General Assembly of Pennsylvania, approved April 8, A. D. 1861, the persons for or on whose account the Wilmington and Reading Railroad, its franchises and appurtenances, were purchased under a decree of sale entered on the sixth day of June A. D. 1876, by the Circuit Court of the United States for the Eastern District of Pennsylvania, did on the said eighteenth day of January A. D. 1877, organize a new corporation under the provisions of the said act of assembly, and did adopt the corporate name of 'The Wilmington & Northern Railroad Company,' and did fix the amount of the capital stock thereof, at one million five hundred thousand dollars ($1,500,000)."

I next offer duly certified copy of an Act to incorporate the purchasers of the Wilmington and Reading Railroad Company passed at Dover, February 22d, 1877, as the same appears on record in the office of the Secretary of State at Dover, Delaware, being Chapter 435, volume 15 of the Laws of Delaware. I read therefrom section 3, as follows:

"Section 3. It shall and may be lawful for the said 'The Wilmington and Northern Railroad Company' aforesaid,

at any time after the organization thereof, to merge and consolidate its capital stock, franchises and property into and with the capital stock, franchises, and property of any corporation then organized under the laws of the State of Pennsylvania, and having authority to operate that portion of the railroad, formerly the property of the Wilmington and Reading Railroad Company, which is situated in the said State of Pennsylvania, and which, together with the portion situated in the State of Delaware, formed the entire line of said railroad sold under the decree of the Circuit Court aforesaid."

I also offer in evidence a certified copy of the articles of consolidation and merger between the Wilmington and Northern Railroad Company, a corporation of the Commonwealth of Pennsylvania, and the Wilmington and Northern Railroad Company, a corporation of the State of Delaware, forming a new corporation by the name, style and title of the Wilmington and Northern Railroad Company, as the same appears of record and remains on file in the office of the Secretary of the Commonwealth of Pennsylvania. I read from the third paragraph of these articles of consolidation and merger the following:—

"*Witnesseth,* That the 'Wilmington and Northern Rail Road Company' of Pennsylvania a corporation of the State of Pennsylvania, and the 'Wilmington and Northern Rail Road Company' of Delaware a corporation of the State of Delaware, do agree that the said companies shall be consolidated into and form one corporation under the name and style of 'The Wilmington and Northern Rail Road Company.'" These articles of consolidation and merger bear the date of March 8th, 1877.

I offer in evidence duly certified copy of articles of consolidation between the Berks and Chester Railroad Company and the Delaware and Pennsylvania State Line Railroad Company, forming one corporation by the name, style and title of Wilmington and Brandywine Railroad Company as the same appears of record and remains on file in the office of the Secretary of the Commonwealth of Pennsylvania.

These articles of consolidation were entered into the twenty-third day of April, 1866, between the Berks and Chester Railroad Company and the Delaware and Pennsylvania State Line Railroad Company.

I read from these articles the first recital, being as follows: "Whereas, The railroads respectively being built by the said companies above named will constitute a continuous line of railway, of uniform gauge, from the city of Wilmington, in the State of Delaware, to the village of Birdsboro, in the county of Berks, and State of Pennsylvania, and the Directors of said companies, upon mature consideration, have determined that the interests of the respective stockholders of said companies, and the public interest and convenience will be greatly promoted by the union of their said roads into one road, and by the consolidation of the respective stocks of said companies into one common consolidated stock; Now, therefore, this agreement, made by and between the companies or corporations above named, parties hereto." Then I omit down to the agreement, which I desire put in the record, as follows: "Witnesseth, that the said Berks and Chester Railroad Company, a corporation of the State of Pennsylvania, and the Delaware and Pennsylvania State Line Railroad Company, a corporation of the State of Delaware, do agree That the said companies shall be consolidated into, and form one corporation under the name and style of 'The Wilmington and Reading Railroad Company.'"

I next offer in evidence a certified copy of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled an Act to Incorporate the Berks and Chester Railroad Company, approved April 20th, 1864, as the same appears of record and remains on file in the office of the Secretary of the Commonwealth of Pennsylvania. I read from this Act portions of section one, omitting a long enumeration of names.

"Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, that (enumerated persons) be and they

are hereby appointed commissioners to open books, and receive subscriptions, and organize a company, by the name, style, and title, of the Berks and Chester Railroad Company, with power to construct a railroad from a point, on the Philadelphia and Reading Railroad, at or near, Birdsboro, in Berks County, and thence by the most available route, to connect with any railroad, or railroads, now built in the county of Chester."

I next offer a certified copy of a supplement to an Act of General Assembly of the Commonwealth of Pennsylvania, entitled "A Supplement to an Act to incorporate the Berks and Chester Railroad Company, approved April twentieth, A. D. one thousand eight hundred and sixty-four, extending the time for the completion of said railroad, and authorizing it to connect with the Delaware and Pennsylvania State Line Railroad Company, and to be consolidated therewith, under the provisions of the Act of the General Assembly, approved the twenty-fourth day of March, A. D. one thousand eight hundred and sixty-five, approved March 16th, 1866, as the same appears of record and remains on file in the office of the Secretary of the Commonwealth of Pennsylvania. I read into the record only a part of section 2, as follows:—

"SECTION 2. That said company be and is hereby authorized to connect their road with the Delaware and Pennsylvania State Line Railroad Company, and, at any time, to consolidate therewith."

I next read into the evidence an agreement between the Philadelphia and Reading Railroad Company and the Wilmington and Northern Railroad Company, bearing date May 16th, 1879. The portions of this agreement which I wish to read into the record are as follows:—

"WHEREAS, the railroad of the Berks County Railroad Company, hereinafter styled the Berks County Railroad, is about to be sold under a mortgage thereon dated November 1st, 1872; and as a portion of the said railroad, viz., that intervening between the terminus of the Wilmington Company's road, on High's Farm, hereinafter called High's Junction and the depot of the Wilmington Company in the

City of Reading is now in possession of the Wilmington Company under a lease from the Berks County Railroad Company, now, therefore, it is agreed by and between the two companies as follows:

"1. (If the Berks County Railroad is purchased by the Reading Company or any person or persons acting in its interest or on its behalf, then the Reading Company shall grant and does hereby grant to the Wilmington Company the perpetual right of running its trains via the said intervening section of the Berks County Railroad now leased by the Wilmington Company, between the said High's Junction and the present station or depot of the Wilmington Company in the City of Reading, subject to such reasonable police regulations in regard to the movement of trains, as may from time to time be established by the Reading Company."

MR. REYNOLDS:—I next offer in evidence a notice dated November 11th, 1896, given by C. H. Coster and Francis Lynde Stetson, to the Wilmington and Northern Railroad Company, which I hand to the Examiner for the purpose of copying, omitting the names of the companies to whom it was given, excepting the Wilmington and Northern Railroad Company:—

"23 Wall Street,

"NEW YORK, November 11th, 1896.

"GENTLEMEN:—We beg leave to inform you that, by virtue of the judgment and decree of the United States Circuit Court for the Eastern District of Pennsylvania, and also by virtue of the deed from the Pennsylvania Company for Insurances on Lives and Granting Annuities, as Trustee, the franchises and property late of The Philadelphia and Reading Railroad Company, have been sold and transferred to the undersigned as purchasers thereof. The decree of sale and the order of confirmation and the deed executed in pursuance thereof, expressly reserve the right to these purchasers, to elect whether or not to assume or adopt any of the leases and contracts sold with the railroad and other property and franchises.

"The undersigned as purchasers have elected not to assume or adopt a number of such leases, agreements and contracts.

"Among the leases, agreements and contracts which the undersigned have elected NOT to assume or adopt are those executed by the parties and of the dates following, to wit: Wilmington and Northern Railroad Company, May 16th, 1879."

(Then follows list of railroads to which notice was given.)

"It is intended that the new Railway Company to be organized by the undersigned as purchasers, shall at twelve o'clock midnight, on November 30, 1896, enter into possession of its property under such decrees and conveyances, and accordingly you are notified that from and after that hour the new Railway Company will decline to render service or to furnish facilities or to proceed under any provision of the above-mentioned leases or contracts, or in any particular to be bound thereby, or to make any payments thereunder, the same having been by us duly disclaimed.

"This notice is given you at the earliest possible moment, in order that you may make such other arrangements as may be necessary or proper for your convenience, or for the public service.

"(Signed) C. H. COSTER,
FRANCIS LYNDE STETSON,
"Purchasers.

"To Wilmington and Northern Railroad Company."

Mr. Reynolds offered in evidence lease of the Wilmington and Northern Railroad Company, bearing date January 17th, 1900, under which the Philadelphia and Reading Railway Company acquired the leasehold interest in the railroad and property of the Wilmington and Northern Railroad Company, extending from French Street in the City of Wilmington, State of Delaware, to a point on the Philadelphia and Reading Railway at or near Birdsboro, together with various branches and sidings and the ordinary railroad equipment.

This lease will not be spread at length on the record to encumber it, but either side is at liberty to read *in extenso* from the document if they see fit.

JOHN F. AUCH, having been duly sworn:—

MR. REYNOLDS:—Preceding the examination of Mr. Auch, I wish to introduce from the old record testimony given by him on April 28th, 1909, appearing in Volume 4, page 667, and following, of which the Examiner has a copy, and I shall hand a copy to the counsel for the Government.

Government's counsel has no other objection to this, save that it is a duplication in part of matter already in the record, and, therefore, quite unnecessarily cumbersome.

Testimony of John F. Auch, a witness called by the defendants in the old suit, April 28, 1909 (Volume IV, page 667).

JOHN F. AUCH, having been duly affirmed, was examined as follows:—

By JUDGE CAMPBELL:

Q. What is your present occupation? A. General Freight Agent, Philadelphia and Reading Railway.

Q. I would like you to begin at the beginning and trace down your connection with the business of the Philadelphia and Reading Railway Company, briefly, but fully enough to cover your experience and knowledge. A. I first entered the employ of the Philadelphia and Reading Railroad Company in 1875, in the capacity of telegraph operator, and served in that capacity until 1879. I was then appointed station agent and served in the capacity of station agent from 1879 until 1884, and in 1884 entered the General Freight Department, and have continued consecutively in that department up to the present time.

Q. Through all administrations? A. Yes, sir, and receiverships.

Q. What knowledge have you of the interchange of traffic between the Philadelphia and Reading Railroad Company, its Receivers, and the Philadelphia and Reading Railway Company since the receivership, and the Central Railroad Company of New Jersey, prior to 1901, at various points of connection? A. In 1875, when I first entered the service of the Philadelphia and Reading Railroad Company, it was confined in its operations to the limits of its own tracks. There was at that time practically no interchange between the Central Railroad of New Jersey and the Philadelphia and Reading Railroad Company. The Central Railroad of New Jersey was likewise limited in its operation. In fact, the Central Railroad of New Jersey in the early 70's did no business beyond Phillipsburg or Easton, which was the western terminus of its line. The relations of the Philadelphia and Reading and its Receivers with the Central Railroad of New Jersey up to say 1884 were practically the same as the relations between the Philadelphia and Reading Railroad Company and its Receivers to any other railroad company; that is, they had no joint rates, no joint routes, nor no interchange.

Q. Have you not overlooked the change in the situation which resulted from the construction of the North Penn Branch from Jenkintown to the Delaware River, the construction of the Delaware and Bound Brook Railroad to Bound Brook Junction, New Jersey, and its subsequent lease of the North Penn and the Bound Brook to the Philadelphia and Reading Railroad Company in 1879, for the interchange of traffic between Philadelphia and New York? A. I did not overlook it. I did not think that I had gotten to that point yet.

Q. As you had passed 1879 and gotten up to 1884, I thought you had overlooked it. A. This is true, there is a breach there that ought to be covered. I think it was in 1879 that the Philadelphia and Reading Railroad Company leased the North Pennsylvania Railroad Company. We found, when that lease was made, that there had been relations established prior to the leasing of the North

Penn, between the Central Railroad of New Jersey, and the North Pennsylvania Railroad Company. In 1876 the Delaware and Bound Brook was opened, and of course the Philadelphia and Reading Railroad Company acquired that portion of its line with its lease of the North Pennsylvania Railroad.

Q. In 1879? A. In 1879. Now there was an interchange between the Central Railroad of New Jersey and the North Pennsylvania Railroad Company at Bethlehem, that continued—or more especially between the Lehigh and Susquehanna—and that continued until the Delaware and Bound Brook was opened up in 1876.

Q. The Lehigh and Susquehanna being a road constructed by the Lehigh Coal and Navigation Company and about 1871 leased to the Central Railroad Company of New Jersey? A. I do not know just the date when it was leased.

Q. But it was leased and is now being operated by the Central Railroad Company of New Jersey? A. Yes, but there was an arrangement between the Lehigh and Susquehanna and the North Pennsylvania Railroad at Bethlehem. It was not until the leasing of the North Pennsylvania Railroad that this interchange with the Central Railroad of New Jersey direct via Bound Brook was accomplished, and that was in 1879. I would like to explain right here that to the leasing of the North Penn—I will call it North Penn for short—there was some little interchange between the Philadelphia and Reading Railroad and the Central Railroad of New Jersey via Allentown, but that interchange was not a direct interchange. It was effected only in connection with the Lehigh Valley, whose tracks extended from Allentown to Easton and there connected with the Central Railroad of New Jersey. At that time of course—say in 1884—we, that is the Philadelphia and Reading, by reason of its lease of the Catawissa at Williamsport, had established a connection with the Lehigh and Susquehanna Division of the Central Railroad of New Jersey at Tamanend or Hauck's Switch, which is practically one and the same

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place. In 1884, the first lease made between the Philadelphia and Reading Railroad Company and the Central Railroad of New Jersey was consummated, and immediately after the making of that lease the Philadelphia and Reading and the Central Railroad of New Jersey began the establishment of joint through rates and routes. Prior to that time the Central Railroad of New Jersey, as I have previously stated, had no joint rates extending to territory beyond its own rails. The Philadelphia and Reading was in practically the same position. The only connection that we had with any other line was that obtained through the acquisition of the Catawissa and Williamsport, which gave us a connection with the Delaware, Lackawanna and Western at Rupert. We had no other connection except that which was obtained with the Lehigh Valley Railroad at Allentown via Reading and Allentown, that is, the East Pennsylvania Branch. We did undertake to handle through traffic in a limited way with the Lehigh Valley, who had enabled us to reach limited territory in New York State via Waverly.

Q. And the Erie Railroad? A. The Erie Railroad. The opening of the Perkiomen Railroad enabled us to make that connection, so that during the Centennial, in 1876, through passengers and through traffic were handled via Waverly and the Erie road via Allentown and via the Perkiomen. The lines were further extended in about 1884—I could not give you the exact date—by the building of the Beech Creek and Fall Brook.

Q. Connecting with the New York Central system? A. Now in the New York Central, connecting with the Philadelphia and Reading at Newberry Junction. The building of those lines gave us a direct connection at Newberry Junction with the New York Central system through the Fall Brook, and put us into the bituminous coal regions, in the Beech Creek and Clearfield districts. Then in 1886 our facilities were further enlarged by the building of the Baltimore and Ohio Railroad, or the extension, rather of the Baltimore and Ohio Railroad from Baltimore to Philadelphia and connecting with the Philadel-

phia and Reading in this city. In 1891 the Philadelphia and Reading extended its line somewhat by building a bridge over the Susquehanna River at Harrisburg and building between Harrisburg and Bowmandale, giving us a through road west as far as Shippensburg. At Shippensburg we connected with the Western Maryland Railroad, and over the Western Maryland we carried to a connection with the Baltimore and Ohio Railroad at Shippensburg and Hagerstown. Now to go back to 1875, I think I have already stated that the traffic of the Philadelphia and Reading Railroad was limited at that time to its own rails. Its principal business at that time was the transportation of anthracite coal from Schuylkill County to tide, or Philadelphia.

Q. Tide at Philadelphia? A. Yes. There had, of course, been some growth in the development, that is, industrial development, in the Schuylkill Valley, and it is my recollection that the market afforded at Philadelphia even for transportation for the anthracite coal did not properly take care of the mine productions and there was continual pressure, both from the industries and the mining industries, to enlarge and afford more extended markets. That pressure resulted, as I have previously stated, in the establishment in 1884 of a number of joint routes and what is called co-operative fast freight lines, operating over the Central Railroad of New Jersey and the Philadelphia and Reading, via the several junction points, that is, via Allentown, via Tamaqua, via Tamanend or Hauck's Switch, via Bound Brook and via Bethlehem. The direct connection with the Central Railroad of New Jersey at Allentown was not affected, though, until 1890. At that time what was known as the Allentown Terminal Railroad was opened and afforded the Philadelphia and Reading and the Central Railroad a direct physical connection at that point. Prior to that time, as I have already stated, the business had to be handled between Allentown and Easton by the Lehigh Valley. Now I have referred to a connection at Rupert with the Delaware, Lackawanna and Western.

Q. On the Catawissa? A. On the Catawissa Branch. We also did have an interchange with the Delaware, Lackawanna and Western Railroad for business to and from New York, by making the delivery to the Lehigh Valley Railroad at Allentown and the Lehigh Valley carrying the traffic over to Phillipsburg and there connecting with the D., L & W., giving us a route into New York, so that the section of the Philadelphia and Reading north and west of Reading could be served in that way. We were absolutely without any means of successfully competing for or handling any traffic originating in the vicinity of Philadelphia, for New York, because the route by Allentown was circuitous and it was impossible to make the time that was essential to enable us to successfully compete for business between Philadelphia and New York. The same might be said with respect to the Lackawanna route as serving the territory north and west of Reading. It was a slow route. We were interfered with more or less by the intervention of the Lehigh Valley there, a third party, to handle the business and the facilities were not very good. They did not undertake to run through cars in those days, like they do now, and never thought of running through trains, so that it meant a transfer at Phillipsburg and another transfer at Allentown, en route between New York and its ultimate destination, even on the line of the Philadelphia and Reading road. From 1879, when the Philadelphia and Reading leased the North Pennsylvania Railroad, which effected this connection with the Central Railroad of New Jersey via Bound Brook, there was a steady growth of traffic interchange between the Philadelphia and Reading Railway territory south of Reading and in the vicinity of Philadelphia. This territory south of Reading was advanced in industrial development and we could not begin to give the manufacturers located on the line of the Philadelphia and Reading Railroad the markets which were required for the output of those concerns. I believe that those demands made upon the Railroad Company for enlarged distributing facilities were instrumental largely in deter-

mining the policy of the company in leasing first the North Pennsylvania Railroad. We were threatened, that is, the company was threatened, between 1875 and 1879 with the loss of a number of industries that had located in the Schuylkill Valley on the supposition that they would get proper transportation facilities. Then we had the advent of the Pennsylvania's line up the Schuylkill Valley. I do not remember just what date that was, but that only tended to disturb matters from an industrial point of view, so far as those industries located on our line were concerned. We had at that time, as I previously stated, no joint rates in connection with the Pennsylvania Railroad, nor any others, except as I have explained, subsequent to 1884.

By MR. REYNOLDS:

Q. The testimony put in was given by you on April 28th, 1909? A. Yes, sir.

Q. Since that date, what, if any, change has occurred in your relations to the Philadelphia and Reading Railway Company? A. I have been advanced to Vice-President and Freight Traffic Manager.

Q. At the present time you have been in the service of the company in different capacities for about forty years, have you not? A. About. Thirty-nine years to be exact.

Q. During that period and down to the present time, have you ever had any connection whatever with the Philadelphia and Reading Coal and Iron Company? A. None whatever.

Q. Or with the Lehigh and New England Railroad Company? A. No, sir.

Q. Or with the Lehigh and Hudson River Railroad? A. No, sir.

Q. Or with the Lehigh and Wilkes-Barre Coal Company? A. No, sir.

Q. Or with the Lehigh Coal and Navigation Company? A. No.

Q. I direct your attention to some of the testimony put in by the Government on the lower half of page 266 (printed page 139), and the upper half of page 267 (printed page 140) of the minutes, a certain letter from a President of

a railroad not a party to this litigation, to a President of one of the defendant railroads, appearing on pages 315, 316, 317, 318 and 319 (printed pages 161 to 163) of the minutes of the testimony. In both of those portions of the testimony reference is made to anthracite freight rates being an adjustment on the basis of a percentage of the price realized for anthracite coal at tidewater. In the letter a reference is also made to the division of the price realized on coal as between the producer and transporter on a percentage basis. Has any such method of making anthracite rates ever been in effect on the Philadelphia and Reading Railway system since you have been in general charge of its rate making? A. No, sir.

Q. Under the rulings of the Interstate Commerce Commission at the present time could you file a tariff naming rates in such a manner? A. We could not. The rulings of the Commission require that rates shall be stated specifically in cents.

Q. Is it a matter, however, of any notoriety and testimony in anthracite litigation that some of the old systems like the D. and H., for example, for many years did make anthracite rates on that basis? A. I believe it is.

Q. I call your attention to certain correspondence set out on page 323 to page 329 (printed pages 165 to 168) of the minutes of the evidence in this case, and I would like to ask you what possible interest the Philadelphia and Reading Railway had in those westbound rates which were the subject matter of that correspondence? A. Where we were interested to the extent that any change in those rates would naturally affect our revenue, our proportion of those rates.

Q. Explain just how that would be. Assume that what apparently was feared had occurred, that the Wabash Railway had insisted upon a lesser through rate to St. Louis, how could that possibly affect the Reading? A. In the manner in which I have stated, that if there were a general reduction in the rates to the west in consequence of a lower rate having been established in connection with the Wabash Railroad, the Philadelphia and Reading Railway would,

of course, lose a proportionate share of the rate by reason of the general reduction.

Q. Therefore, you did have a direct interest in maintaining your anthracite rate proportion where it was? A. Yes, sir. We have always regarded the rates to the far west on anthracite coal and our proportion of those rates as rather thin, unsatisfactory, and we naturally dislike to see any further reduction or possible reduction.

Q. I observe that this correspondence took place in 1908. Since that time have the western lines reduced their anthracite rates? A. There have been some readjustments of anthracite rates in the west or by the western lines. I do not think that there have been any reductions.

Q. What recent action, if any, has the western lines taken in respect to anthracite rates? A. The western roads have within the last year undertaken to advance the rates on anthracite about five per cent. in common with the five per cent. increase, and they have been rather insistent upon such an advance being made effective even from the anthracite regions, and have gone so far as to suggest that unless the rates were advanced from the anthracite regions they would feel disposed to withdraw concurrence in the rates heretofore established.

Q. That is, their position now is that they want higher rates? A. They want higher rates decidedly.

Q. And if they do not get them they will withdraw from their concurrence? A. Yes, sir.

Q. Specifiy the roads or group of roads which you are referring to? A. I refer to the group of roads commonly known as the Central Freight Association roads. I can name them individually, if you would like them. That means all the roads west of the termini.

By Mr. Coudert:

Q. All the roads west of your termini? A. Yes, sir. We can put it, west of our termini. Although I mean west of Buffalo and Erie. But that same answer may be applied to the roads connecting with the Philadelphia and Reading Railway on the west.

By MR. REYNOLDS:

Q. Read a certain letter appearing in the record beginning at the bottom of page 330 (printed page 168) and running over to the top of page 332 (printed page 169) in minutes of testimony. Is there anything unusual or abnormal or extraordinary about that letter? A. I have not been able to detect it.

Q. Is it or not customary for you in making rates to always consult your shippers? A. Quite frequently. Especially when the rate proposed concerns a commodity that is likely to move in considerable volume as to tonnage, and when proposition is made from some connecting line to establish certain rates on a given commodity we quite frequently consult the shippers of those commodities, as we know them in our own territory, to ascertain whether or not the rates proposed are liable to develop any business.

Q. Take the ordinary commodity rate, the commodities moving in large volume involving rate making in the Trunk Lines Association territory, is it or not usual to have the shippers and their representatives consult freely with all the lines in the making of rates? A. I think so. The establishment of rates and the publishing of tariffs are matters of a good deal of expense, and our aim is to avoid, as far as possible, the issuance of so-called paper rates. We do not think there is any use of establishing tariffs on mere sentiment, and we frequently consult the shipper to ascertain whether there is liable to be any traffic developed in the event of the rates proposed being established. If we find that there is not, we frequently do not establish the tariffs that are under consideration.

Q. How much did it cost you to print your tariffs for this five per cent. advance? A. I think that the cost of printing, together with the clerical work, and the preparation of the tariffs, was about $25,000.

Q. You do not spend $25,000 unless you think there is some traffic going to move? A. Not if I know it.

Q. I call your attention to page 333 (printed page

170) of the record. That letter is incomplete, but, so far as it appears in the record, what is the significance of the letter from a traffic standpoint? A. No significance attached to that letter at all. It is the ordinary application for a rate from a shipper.

By MR. COUDERT:

Q. You do not deny any of the facts stated in that letter? A. No; I do not deny any of the facts.

By MR. REYNOLDS:

Q. Do you furnish any sea-going tug and barge service at any port other than at Port Richmond? A. No, sir.

Q. Do you discriminate as between shippers in respect to the facilities afforded by your sea-going tugs and barges in the distribution of coal? A. No, sir.

Q. Do you give independent shippers the same rates as you do the Philadelphia and Reading Coal and Iron Company in the barge and tug service? A. Yes, sir.

Q. Is it usual and normal, or unusual and abnormal, for the railway to extend large credit to large shippers on its rails? A. I should say it was usual, quite normal.

Q. Why is any such custom necessary with large shippers? A. The larger the business, the larger the credit that is necessary. You cannot do a large business without extensive credit. No industry can conduct a large business without extensive credit.

Q. Take the mere mechanics of shipping freight, loading it into cars, getting the bills of lading and the waybills and the manifests, and then paying the freight bills on shipment, would it be possible for a large shipper shipping a great number of consignments per day to transact a business of that magnitude and pay his bills in money day by day? A. It would very materially increase the mechanical cost of conducting the business. If we were to write out a waybill or an expense bill for each individual shipment and collect it as the shipment went forward, or as the shipment was delivered, it would multiply the work in connection with the operation many fold.

Q. Are your credit arrangements with the Philadelphia

and Reading Coal and Iron Company any different in any respect whatever from the credit arrangements which you have with shippers on your lines of the same magnitude or of a magnitude anything like approaching it? Take the Bethlehem Steel Company, for instance. A. It is the same arrangement.

Q. Do you give credit to the United States Government in transportation? A. We do. Against our desire at times.

Q. Comparing the United States Government as a debtor and the Philadelphia and Reading Coal and Iron Company as a debtor, which shipper pays its bills with the greater promptitude? A. The Philadelphia and Reading Coal and Iron Company.

Q. By how many months? A. From six to eighteen.

Q. In connection with the shipments of anthracite coal over the Philadelphia and Reading Railway system, about what has been the comparative volume of shipments of the Philadelphia and Reading Coal and Iron Company and other shipments on the railway since you last testified, in the last four or five years? A. I have prepared a statement showing the shipment of anthracite coal in tons, 2240 pounds, from the Schuylkill Region by various shippers as indicated over the Philadelphia and Reading Railway Company for four years ending June 30th, 1913. The statement is as follows:—

"PHILADELPHIA AND READING RAILWAY COMPANY.

Statement showing Shipments of Anthracite Coal (in tons 2240 pounds) from the Schuylkill Region, etc., by Various Shippers, as indicated, over Philadelphia and Reading Railway, for Four Years ending June 30th, 1913.

	P. & R. C. & I. Co.	Other Shippers.	Total.
1910	7,077,557.09	3,676,114.14	10,753,671.23
1911	7,448,624.16	4,005,313.03	11,453,937.19
1912	7,471,043.07	3,527,740.16	10,998,784.03
1913	8,857,894.08	3,793,881.17	12,651,776.05
	30,855,120.00	15,003,050.10	45,858,170.10"

Q. From that volume of shipments by shippers other than the Philadelphia and Reading Coal and Iron Company for the Schuylkill Region I assume there is a very considerable number of independent operators in that territory; is that correct? A. Yes, sir; there are quite a number of independent operators. I file with the Examiner, and also give to Government's counsel, a list of those independent operators in that territory. The statement is as follows:—

PHILADELPHIA AND READING RAILWAY COMPANY.

List of Independent Collieries or Washeries and the Names of Shippers located in the Schuylkill Region and Shipping Anthracite Coal over P. & R. Ry.

Colliery or Washery.	Name of Shipper.
Katherine	Treverton Coal Co.
Buck Ridge No. 2	Buck Ridge Mining Co.
Corbin	Excelsior Coal Co.
Excelsior	" " "
Enterprise	Enterprise Coal Co.
Ryan & Bergen	Ryan & Bergen.
Natalie	Colonial Collieries Co.
Oxford Coal Co	Madeira Hill & Co.
Cambridge	Cambridge Coal Co.
Kehley Run	Thomas Colliery Co.
Hudson	H. A. Smith & Co.
Stanton	Brookwood Coal Co.
Girard, Bear Ridge	W. R. McTurk Coal Co.
Morea	Weston Dodson & Co.
Pine Hill	Pine Hill Coal Co.
Lytle	Lytle Coal Co.
East Lehigh	Shepp Bros.
Bell	Gorman & Campion.
Silver Hill	Phillips Coal Co.
Maryd	Maryd. Coal Co.
Lucia R.	Pt. Carbon Coal Co.
Brockton	Sch. Lehigh Coal Co.
Mount Hope	Mount Hope Coal Co.
St. Clair	St. Clair Coal Co.
Howard	White & Co.
Laurel Run	Butcher Creek Coal Co.
Ellsworth	J. H. Davis.
Buck Run	Buck Run Coal Co.
Oak Hill	Oak Hill Coal Co.
Block Heath No. 2	W. W. Scott Est.
Coleraine	A. S. Van Winkle & Co.
Wolf Creek	Wolf Creek Coal Co.

Q. Are there any other transportation systems serving the anthracite producers in the Schuylkill region? A. Yes, sir.

Q. What are they? A. The Pennsylvania Railroad system and the Lehigh Valley Railroad system.

Q. If you know, will you state about how great a tonnage from that region is annually moved by the Pennsylvania Railroad? A. We are advised by the Pennsylvania Railroad that during the year ending June 30th, 1911, the Pennsylvania Railroad carried from the Schuylkill coal regions 4,150,880 tons of anthracite coal. For the year ending June 30th, 1912, 3,738,045 gross tons.

Q. How much of a factor is the Lehigh Valley in the Schuylkill region? A. The Lehigh Valley is quite a factor, although its tonnage is not as great as the Pennsylvania Railroad. We are advised by the Lehigh Valley people that its line received and transported from the Schuylkill region during the same period, ending June 30th, 1911, 2,842,451 gross tons. For the period ending June 30th, 1912, 2,230,662 gross tons. Making a total for the two companies for the year ending June 30th, 1911, 6,993,331 gross tons, and for the year ending June 30th, 1912, 5,968,707 gross tons.

Q. In the Government's bill there is an allegation to the effect that the transportation of anthracite coal is enormously profitable. Have you made any comparisons as between your rates on anthracite coal and your rates on other commodities as pertinent to that allegation? A. I have.

Q. Can you take some point in the coal regions, for instance, Pottsville, and put into the record a comparison of the rates or revenues per ton and the average revenue per ton per mile on freight exclusive of anthracite coal between that same locality and the same destination, say tidewater, New York, for some given years? A. I have here a statement showing the average revenue per ton and average revenue per ton per mile of all freight exclusive of anthracite coal between tidewater at New York and Pottsville,

Pennsylvania, for the fiscal year ending June 30th, 1913. The statement is as follows:—

"PHILADELPHIA AND READING RAILWAY COMPANY.

"Statement Showing Average Revenue Per Ton and Average Revenue Per Ton Per Mile on All Freight Exclusive of Anthracite Coal Between Tidewater at New York and Pottsville, Pa., Fiscal Year Ended June 30th, 1913.

	Pottsville to New York.		New York to Pottsville.	
	Average revenue per ton.	Average revenue per ton mile. Cents.	Average revenue per ton.	Average revenue per ton mile. Cents.
July, 1912.....	$4.30	2.514	$4.34	2.538
August, "	3.60	2.100	4.80	2.807
September, "	4.86	2.842	4.76	2.783
October, "	4.60	2.690	5.08	2.970
November, "	3.26	1.906	4.89	2.285
December, "	2.98	1.742	4.54	2.654
January, 1913.....	3.57	2.087	4.34	2.532
February, "	3.95	2.309	4.83	2.824
March, "	3.84	2.245	5.22	3.052
April, "	3.71	2.163	4.84	2.830
May, "	3.71	2.163	4.96	2.900
June, "	3.51	2.052	4.65	2.719
Average for the year ..	$3.76	2.198	$4.79	2.801"

Q. Have you prepared a similar statement as to the revenue per ton per mile on anthracite coal between Pottsville and tidewater, New York? A. Yes, sir. I have prepared a statement showing the revenue per net ton per mile on anthracite coal from the mines to tidewater at Port Reading by months for the present year, 1913.

Q. And that is an exact parallel with the previous statement, except that this covers anthracite coal, is it not? A. Yes, sir. That is all it covers.

The statement is as follows:—

"PHILADELPHIA AND READING RAILWAY COMPANY.

Statement Showing Revenue per Net Ton per Mile on Anthracite Coal from the Mines to Tidewater at Port Reading by Months for the Fiscal Year 1913.

		Revenue per Ton per Mile. Mills.
July,	1912	74
August,	"	72
September,	"	72
October,	"	73
November,	"	74
December,	"	74
January,	1913	74
February,	"	75
March,	"	74
April,	"	76
May,	"	74
June,	"	74
Average for the year		74

Average haul, 172 miles."

Q. How does the empty car movement on anthracite coal compare with the empty car movement on general merchandise freight? A. So far as tidewater is concerned, we figure that it is an absolute empty movement one way. That is, the return empty movement. In other words, there is no lading for the cars going back to the mines from tide. Whereas in the case of merchandise between New York and Pottsville, we have lading in the cars both directions.

Q. As a matter of fact, does the Schuylkill Canal reach or penetrate the coal regions of the so-called Schuylkill field? A. It does not; no, sir.

Q. How does coal get to the canal from the coal regions? A. It is carried by rail to the northern or western terminus of the canal from the collieries, averaging a mileage varying from ten to twenty-five miles.

Q. What railroad is the canal dependent upon to get its coal transported. A. The Philadelphia and Reading Railway.

Q. And it is at the mercy of that railroad as a transportation matter? A. Absolutely, yes.

Q. Are the terminii of the Schuylkill Canal in Philadelphia physically convenient to any number of consignees of coal? A. No, sir. The terminii are very limited, and there are comparatively few consignees that can utilize the canal *terminii*.

Q. What is the method of unloading coal from canal boats to coal yards where they can be reached? A. It varies. Some of the yards have mechanical appliances adjusted that enable them to take the coal out of the canal boats and put it into their yards, while the smaller yards simply have the coal lifted out of the canal boats by bucket and loaded onto barrows and wheeled into their yards.

Q. Is it or not a fact that it is always a lifting movement to get the coal from the water level or below in the hull of the vessel to a position where it can be put in a coal pocket to be sold? A. Yes, sir. It is always a lifting process. The height of course varies according to the circumstances that I have previously described. That is, if it is a large trestle it may be pretty high and the lift is greater.

Q. How is coal delivered from a coal car on the railroad to a coal pocket in Philadelphia? A. The car is placed directly on to the trestle and the coal dumped into the bins from the car simply by opening the bottom.

Q. Have you ever had any difficulty, as a traffic man, in competing with any canal borne coal in Philadelphia? A. No, sir. We do not consider the canal is in competition with the railroad or the railroad in competition with the canal.

Q. As a matter of fact, canals make very considerably lower rates than the railroad, do they not? A. Yes, sir. They make lower rates, and are still nevertheless unable to make them sufficiently low to attract the business.

Q. Is the difference in rate wiped out by the method of unloading? A. The difference in the rate is wiped out—there is nothing economical about the canal transportation, and the difference between the canal rates, the tolls, and the freight rate is more than absorbed by the additional expense of handling the coal at the termini and the loss that

occurs in consequence of that particular method of handling.

Q. What loss do you mean? A. The degradation of the coal.

Q. By degradation of the coal you mean breaking it down into lower grades? A. Yes, sir; breaking it down, some of it into dust that is blown away by the wind.

Q. The Lehigh Coal and Navigation Company runs a canal down here, do they not? A. I think I have heard something of a transportation line of that sort; yes, sir.

Q. And owning the canal, they also ship coal, do they not? A. They do; yes.

Q. They are thus in a position, if they choose, to handle their own coal at exactly what it costs them to handle it, are they not? A. I suppose so.

Q. Can they compete with you in handling coal to Philadelphia? A. They bring some coal in here, but as to the canal, I should say that the volume was not very great.

Q. Does the P. and R. Railway move any coal from any of the Temple Coal Company operations or the operations of any of the subsidiary companies of the Temple Coal and Iron Company? A. No, sir.

Q. Do you know whether the Central Railroad Company of New Jersey does? A. To the best of my knowledge, no.

Q. What, if any, change has taken place as matter of diversification of the traffic of the Philadelphia and Reading Railway Company since it has been in existence as compared with the character and nature of the traffic previously handled by the predecessor company, the Philadelphia and Reading Railroad Company? A. There has been a very marked change in that respect. Comparing the latter period with the previous period, you will note that in the earlier history its traffic was principally that derived from the transportation of anthracite coal. Its diversified or general merchandise traffic was comparatively small. Up to say 1885 it handled practically no bituminous coal whatever. When I say no bituminous coal whatever, that should be moved practically no bituminous coal. It had occasionally a car for blacksmithing purposes or something of that sort.

It was so limited that we did not consider it an item of traffic.

Q. Have you prepared a statement showing in figures the changes in the nature of the traffic? A. I have prepared a statement showing particularly the changes that have taken place since 1896.

Q. That is when the Philadelphia and Reading Railway Company came into possession of the property? A. Yes, sir. I made no comparison between the railway and the railroad.

Q. Will you file with the Examiner a copy of the statement as part of your testimony?

Witness produced statement, which is as follows:—

"PHILADELPHIA AND READING RAILWAY COMPANY.

Statement Showing Tonnage of (a.) Anthracite Coal, (b.) Bituminous Coal, (c.) General Merchandise, and (d.) Total Tonnage Carried During Fiscal Years Ending 1896 to 1913, inclusive, and the Percentage Increase in the Respective Tonnage Items named, for the Year 1913, as Compared with Year 1896.

	(a) Anthracite Coal. Net Tons.	(b) Bituminous Coal. Net Tons.	(c) Merchandise. Net Tons.	(d) Total. Net Tons.
1896	11,105,153	2,232,533	8,749,665	22,087,350
1897	10,337,866	2,724,890	8,324,052	21,386,808
1898	10,600,349	3,939,117	9,862,641	24,402,107
1899	10,677,736	4,705,816	11,385,928	26,769,480
1900	11,953,262	5,084,485	14,192,019	31,229,766
1901	11,786,758	5,620,710	14,535,083	31,942,551
1902	10,601,867	6,817,538	16,413,700	33,833,105
1903	8,884,838	9,449,804	18,227,961	36,562,603
1904	12,683,579	9,026,352	16,633,220	38,343,151
1905	13,472,994	10,286,551	18,695,193	42,454,738
1906	13,279,696	11,746,110	22,353,845	47,379,651
1907	14,810,635	12,533,080	24,414,314	51,758,029
1908	15,161,959	12,114,413	19,249,682	46,526,054
1909	12,977,261	11,843,231	18,452,888	43,273,380
1910	12,241,165	14,830,063	23,260,452	50,331,680
1911	13,076,455	15,509,972	22,284,179	50,870,606
1912	12,571,938	16,582,970	22,711,791	51,866,699
1913	14,405,203	18,049,267	26,550,439	59,002,909
Percentage increase 1913 over 1896	30%	708%	203%	167%"

At one o'clock a recess was taken until two o'clock P. M.

Q. Has this change in the character of the traffic of the Philadelphia and Reading Railway Company been a mere coincidence, or has there been some conscious effort on the part of the traffic department to bring about such a result? A. No; there has been constant effort in the direction indicated by the figures shown here. The policy was at one time, prior to say in the seventies, between the seventies and eighties, to recognize the fact that the Philadelphia and Reading Railway Company was primarily an anthracite carrier, and under those conditions every effort was made to develop its anthracite tonnage. Industry, so far as it existed, manufacturing along the line of the road was encouraged to use anthracite as its fuel, and that in a measure confined the road to the carriage of anthracite and its manufactories to these concerns which could produce with the use of anthracite coal. Anthracite was, however, expensive as compared with bituminous coal, which was being developed very generally, and in view of the fact that changes had been made affiliations arranged, which gave the Reading connection with bituminous carriers, the manufacturers were then enabled to get bituminous coal in place of anthracite, and in that way they very materially cheapened their product, and that policy has been responsible for the large increase shown in the carriage of bituminous coal between 1896 and 1913. And the effect of that increase in bituminous coal to produce the results with respect to the diversified tonnage, coupled with the general merchandise, is the product of these manufacturing concerns which were encouraged and fostered through their ability to obtain bituminous coal to use for that purpose.

Q. Can you say whether, as matter of coincidence, the adversities of the Philadelphia and Reading Railway coincide with the period when its traffic was principally anthracite coal? A. It did.

Q. And has the prosperity of the Philadelphia and Reading Railway Company coincided with this growth

of traffic in other commodities than anthracite coal? A. The foundations for this growth were laid when these affiliations were made so as to enable the manufacturers and industry in the Schuylkill Valley which was served by the railroad company to obtain this bituminous coal.

Q. How near to Reading do the physical structures of the Wilmington and Northern Railroad approach? A. About two and a half miles.

Q. What is the point? A. High's Junction. High's Junction is the northern terminus of the Wilmington and Northern Railroad, and from High's Junction into Reading, that is the terminal of the Wilmington and Northern Railroad in Reading, is approximately two and a half miles. It is a little less than that, about a tenth I think.

Q. Have they always been and were they at the time of the lease entirely dependent upon the Reading system for the means of getting between High's Junction and Reading? A. Absolutely, yes.

Q. Does the Wilmington and Northern Railroad connect with the Pennsylvania Railroad at Reading? A. It does not. It never has maintained a physical connection with the Pennsylvania system at that point, or in the vicinity of Reading.

Q. Was anthracite coal at any time the principal traffic of the Wilmington and Northern Railroad? A. I think not.

Q. Is it now? A. No, sir.

Q. Give a brief statement showing the history of the traffic changes of the Wilmington and Northern Railroad during the time you have been familiar with that property? A. I have been familiar with the Wilmington and Northern Railroad ever since my connection with the Philadelphia and Reading Railroad Company, but more especially with its traffic since 1885. The importance of the Wilmington and Northern Railroad, however, in this case, as emphasized by the Government, caused me to look into the archives of the Wilmington and Northern, and I have made some notes here of information that was taken from records that are now in my possession.

Q. In a general way, what was the purpose of the building of the Wilmington and Northern Railroad? A. The Wilmington and Northern Railroad was promoted by interests that may be said to have been friendly to the Reading Railroad Company, and more especially by the iron manufacturers located at Coatesville.

Q. Coatesville is about equi-distant between the present termini of the Wilmington and Northern Railroad, is it not? A. Yes, sir; Coatesville is about thirty-two miles from Wilmington, and it is thirty miles and a fraction to Birdsboro, which was at that time the northern terminus, or about half way between the terminus at High's Junction and Wilmington on the other end.

Q. What sort of industries were located at Coatesville? A. The only industries at Coatesville were the iron interests, the iron mills and rolling mills and plate mills. The Lukens Iron and Steel Company, is a very old establishment, and was located at that point before it had any railroad facilities at all. The idea in promoting the Wilmington and Northern Railroad was primarily to obtain railroad transportation facilities in competition with the Pennsylvania Railroad, which at that time was the only rail facilities that it had. And incidentally it was understood that there were important deposits of iron ore in Chester County, and it was thought that the building of this road would develop those deposits and ultimately attract furnace people to locate along the line of the Wilmington and Northern Railroad and build furnaces and use up this ore that was to be mined in Chester County and adjacent to the Brandywine, the Brandywine Valley. In addition to that, there were a number of furnaces then in existence in the Schuylkill Valley, and those furnaces in the Schuylkill Valley along the line of the Philadelphia and Reading Railroad were anxious to secure supplies of ore from all reasonable sources, and it was believed that there would be quite a traffic developed in the transportation of iron ore from those mines adjacent to the Wilmington and Northern road to the furnaces on the line of the Philadelphia and Reading Railroad in the Schuylkill Valley. Incidentally, I believe, it was expected

that there would be quite an important development in the manufacture of iron, particularly from the rolling mill point of view at Wilmington, and, it was supposed that there would be quite an important traffic development in iron and steel at Wilmington. I say "iron." I have thus far mentioned steel, but, in those days, steel was not thought of very much. We refer to those mills now as iron and steel mills. In the earlier period it was iron entirely.

Q. Has that industry connected with the production of iron and steel been a considerable or a negligible proportion of the traffic? A. It has been the bulk of its traffic. The iron industry has expanded very considerably at Coatesville. It had its struggles and vicissitudes, but eventually it seems to have overcome them, and is now in a very flourishing condition, so that the production at Coatesville is now very greatly in excess of what it was at the time this road was projected. As to Wilmington, however, it is not very much ahead of what it was at the time of the projection of the road, especially as to iron and steel manufacture. There have been some attempts made to develop the steel industry at Wilmington, but they have not been very successful in that direction, and a number of mills and foundries that were in existence twenty years ago have been wiped out; that is, are not now in operation.

Q. During that period of which you speak has there been a very great change of any kind in the use of bituminous coal in the production of steel and iron? A. There has been about the same ratio of increase in the bituminous coal traffic on the Wilmington and Northern Railroad that there has been on the Reading, considering the smaller property and the extent of the industry on the line of the Wilmington and Northern Railroad as compared with that on the Reading. They have changed from the use of anthracite coal, to which in the earlier period they were almost exclusively confined in their manufacturing, to that of bituminous coal, which is very much cheaper fuel.

Q. Is that change in the manufacture of steel products generally throughout the country, or are you referring es-

pecially to Coatesville? A. No; it is general. That is the situation generally.

Q. That bituminous coal and coke have displaced very generally anthracite coal in the production of steel products? A. Yes, sir. The time was when there was some twenty-five or thirty blast furnaces in operation on the line of the Philadelphia and Reading Railroad Company that were using anthracite coal in the smelting of iron exclusively. There is not a furnace in existence or in operation to-day in the Schuylkill Valley that is confined exclusively to the use of anthracite coal. Anthracite, where it is used at all, is used in a very small proportion to the total amount of fuel used in the smelting process.

Q. How far is it from Birdsboro to the nearest productive coal region in the anthracite field? A. From Birdsboro to the Schuylkill region or the mines south of Broad Mountain would be about forty-five miles.

Q. That is as close as the Wilmington and Northern gets to the anthracite fields? A. That is as close as it gets or ever did get.

Q. Why, from a traffic standpoint, should not the Wilmington and Northern carry vast quantities of anthracite coal for transshipment over the piers at Wilmington? A. There are two reasons why it should not do that. In the first place it originates no anthracite coal on its line, it is dependent on some other anthracite carrier to supply it with that traffic; and, in the second place much would depend on the facilities that were provided at Wilmington for transshipment. If the facilities provided at Philadelphia, or some other port were inadequate or insufficient to accommodate all of the coal that was being transported to the port for transshipment, Wilmington might stand a possible chance of securing some of that business. But, as matter of fact, it never did secure any of it, and never made provision for it.

Q. What is the depth of water at the terminus of the Wilmington and Northern in that vicinity? A. The Delaware River pier was constructed in 1882, I think, and when it was completed they had about nine feet of water at

low tide off the end of the pier. The pier was about 540 feet long.

Q. As a general shipping port, to what extent does Wilmington or has Wilmington ever attracted shipping? A. It has never attracted shipping as a port in any way or in any particular. In the first place, it has not got the depth of water, it has not got the piers, and, if it had the piers, it would have difficulty in getting a sufficient depth of water to accommodate sea going vessels. As a consequence, in import or export—of the latter I know of none—but as to import traffic facilities they had to anchor out in midstream and handle any importations that they wish to discharge for Wilmington or over the Wilmington and Northern Railroad on to lighters or cars that were placed on floats and put alongide of the vessel in the middle of the river.

Q. As compared with Philadelphia, what importance has Wilmington ever had in its entire history as a shipper in any line of industry? A. Insignificant. Wilmington is insignificant as compared with Philadelphia.

Q. Is it not a fact that a great deal of the materials coming to Wilmington are actually brought to the port of Philadelphia and then transshipped by rail to Wilmington? A. Yes, sir; that is a fact.

Q. Is that due to conditions over which the Philadelphia and Reading has the slightest control? A. None, whatever.

Q. What is it due to? A. The fact of the matter is that as to imports Wilmington, or anything that was immediately tributary to Wilmington, would not take once a year the cargo that is usually carried by one of these ocean vessels, and, as a consequence, the vessel is loaded for and docks at a port where it can most economically and conveniently distribute its cargo. A vessel carrying a cargo of a certain commodity, say of four thousand or five thousand tons, would dock at Philadelphia, for the reason that perhaps four-fifths of that cargo is for distribution on the line of the Philadelphia and Reading Rail-

road at interior points on the line of the Philadelphia and Reading Railroad, whereas, only one-fifth would be used by manufacturers at Wilmington. The consequence is it is more economical for the vessel to come to Philadelphia and discharge here and ship the one-fifth of its cargo to Wilmington by rail or by water, or any other way they can get it there.

Q. Which is greater in its importance as a commercial center, Philadelphia or Wilmington? A. Philadelphia.

Q. How much greater? Is there any way you can express it? A. Measured by population, Philadelphia has a population of over a million and a half of people where Wilmington has not reached the hundred thousand yet.

Q. Is it a fact or not that in the matter of transshipment at ports the availability of a return load controls in any way the port at which shipping touches? A. Well, it has some bearing on it, but much depends on the character of the transshipping. Take anthracite coal, if you please, which requires a car of a special class and construction for the transportation of that coal to tide. The port may be a port of entry and would reasonably be expected to furnish a return of lading for those cars, but, as matter of fact, the character of the import trade is such that those cars could not be used, that is, the coal cars could not be used for the import trade, to any very great extent. Take, however, in the case of iron ore, there is some opportunity to utilize the coal cars for return lading of iron ore part of the way, but, our experience is that even when those cars are loaded with ore it is going in a direction away from the mines rather than in the direction of the mines.

Q. In the early history did the Wilmington and Northern, before it was acquired by lease by the Reading, make any effort to develop a marine business in connection with its land haul? A. There was an effort made to develop marine business in connection with the railroad, whether it was the effort of the Wilmington and Northern, or whether it was expected to be developed by outside interests, I am not sure.

Q. There was an attempt, however, to do so? A. Yes, sir; there was an attempt.

Q. Was it a success or failure? A. It never materialized.

Q. When you are as a traffic executive directing the routing of anthracite coal from the coal regions to points in the south on the Baltimore and Ohio and Pennsylvania Railroad systems, what route does that anthracite take to make connection with those lines? A. Via Philadelphia.

Q. You turn all coal over to these lines at Philadelphia? A. Yes, sir.

Q. You have a junction with the two roads in the vicinity of Wilmington, have you not? A. We have a junction of the Baltimore and Ohio Railroad at what is known as Elsmere Junction, and there is a junction between the Wilmington and Northern Railroad, and what was formerly the P. W. & B., which is now a part of the Pennsylvania system at Wilmington.

Q. Why do you not route that anthracite coal by Elsmere Junction to B. & O points and via Wilmington to Pennsylvania points, as a traffic matter merely? A. It would be unwise to do it from a traffic standpoint, for the reason that every road aims to retain to its own rails the traffic which it develops for the longest possible distance that can be obtained without prejudice to the traffic or to the public.

Q. Does the B. & O. traffic department and the Pennsylvania Railroad traffic department observe that same self-protective policy in the routing of anthracite coal? A. They do. They do not want to take the business at a junction point which would give them only fifty miles if they had a hundred miles of rails over which that business could be passed without any detriment to the traffic.

Q. Before the acquisition of the Wilmington and Northern by the Philadelphia and Reading, did the Pennsylvania or the B. & O., either of them, accept anthracite coal routing via the Wilmington and Northern through the Elsmere Junction and the Wilmington connection with their respective lines? A. Not unless it gave them the same revenue

result that they would receive if the coal was delivered to them at Philadelphia or Park Junction.

Q. Has there been any change in the attitude of your two connections in respect to their adherence to that policy since the acquisition by the Reading Company of the Wilmington and Northern road. A. None whatever.

Q. Is the matter of traffic routing interwoven with this question of divisions? A. Very largely. In fact, it is a determining factor as to the route.

Q. Must you consult your connection as to the routing in view of that adherence upon the divisions? A. Always.

Q. Can you say that the routing of this traffic in anthracite is to a large extent controlled by the demands of your connections? A. It is; yes, sir.

Q. When you route anthracite coal to points on the Baltimore and Ohio Railroad in the south where do you deliver it to them in Philadelphia? A. At Park Junction.

Q. Is that by mutual arrangement with the Baltimore and Ohio? A. Yes, sir.

Q. And is that the best routing arrangement you can make with them by negotiations? A. Yes. The Baltimore and Ohio insist upon all delivery from the Reading's system to them at Park Junction.

Q. And they are in a traffic position to control that routing? A. Certainly. If we undertake to route it in any other way they can demand the same revenue from the other junction point, and do demand, as a rule, the same revenue from the other junction point that they would receive under a fair and equitable arrangement via Park Junction and by use of constructive distances for those periods of divisions it has the effect of very materially increasing the total of mileage used in the route.

Q. When you deliver anthracite coal to the Pennsylvania Railroad at Philadelphia where do you deliver it to them? A. At Belmont.

Q. Does the Pennsylvania Railroad insist upon delivery at that point? A. Yes, sir. Although there is this exception to the deliveries with the Pennsylvania Rail-

road; under an old arrangement that existed between the Philadelphia and Reading Railroad Company, and the P. W. and B. before the Pennsylvania acquired an interest in the P. W. & B., anthracite or any other traffic, that was interchanged with the P. W. & B. road was routed via Belmont and Gray's Ferry over what is known as the Chester Branch of the Philadelphia and Reading, and turned over to the P. W. & B. at Thurlow Junction, which is south of Chester.

Q. But some distance from Wilmington in the direction of Philadelphia? A. It is about twenty miles short of Wilmington. In other words, Thurlow is ten miles south of Philadelphia, while Wilmington is thirty miles south of Philadelphia.

Q. Does the Pennsylvania Railroad dictate that routing to you? A. Yes, sir.

Q. Who is the greatest competitor of the Reading system in its present condition, together with its affiliation with the Central Railroad Company of New Jersey through the majority stock ownership of that company by the Reading Company? A. The Pennsylvania Railroad Company now, and always has been.

Q. Does the Pennsylvania Railroad compete with the Reading system as thus defined between Harrisburg and New York? A. It does.

Q. Between Philadelphia and Atlantic City? A. It does; yes, sir.

Q. Between Philadelphia and Cape May? A. Yes, sir.

Q. Between Pottsville and New York? A. Yes, sir.

Q. What other points? A. There is not a point in the State of Pennsylvania, with one or two exceptions, that is valuable from a traffic point of view, and which is reached by the Reading system, which is not also reached by the Pennsylvania Railroad. That will also apply to New Jersey, like Camden, New Jersey and Trenton, New Jersey, and outside of those points, and the seaside resorts there is not very much in south Jersey which is not common to both the Reading system and the Pennsylvania system.

Q. Taking the Reading system formerly so-called in conjunction with the Jersey Central system, to what extent does that bring Northern New Jersey and New York points in competition with the Pennsylvania Railroad? Do they compete at Newark? A. Yes, sir; they are in competition at Newark, Elizabeth, Jersey City, Perth Amboy and Long Branch and points on the north Jersey coast.

Q. Do they compete at Phillipsburg? A. Phillipsburg, New Jersey, yes, sir. There is another point I think they are competitors, and that is Flemington, New Jersey. The Central branch I think is into Flemington.

Q. In early days, it is a fact shown by the record here, Government's proof, that the Philadelphia and Reading Railway, under whatever name it was going at that time, and the Central Railroad of New Jersey, and the Baltimore and Ohio Railroad, had an agreement by which they routed traffic through from Jersey City and Bound Brook over the Jersey Central from Bound Brook to Philadelphia, over the Philadelphia and Reading and from Philadelphia on over the Baltimore and Ohio system. To what extent did that agreement covering that routing preserve to the Philadelphia and Reading a means of competition with the Pennsylvania Railroad between New York harbor and eastern Pennsylvania points? A. It did not affect any of the territory that was in competition with the Pennsylvania Railroad outside of the direct line between New York and Washington.

Q. Did you ever have any business between Harrisburg and New York that needed any protection? A. I should think we did. That is where the protection was most needed, that is, between New York and Harrisburg, between New York and Pottsville, between New York and Lancaster, and Columbia, and we may put Coatesville into the same category now, and Reading, Pottstown, Phoenixville, all important points in the Schuylkill Valley and then getting over onto the Susquehanna River at Williamsport, Sunbury, Milton, and points along the east bank of the Susquehanna River, crossing the Susquehanna River at Har-

risburg, going into Carlisle and Shippensburg and into the Cumberland Valley.

Q. At what point on the Jersey Central do you normally deliver, and have you always normally delivered the traffic which moves from the various places you have just named destined to points on the Jersey Central? A. It varies. Take the traffic originating in the Schuylkill Valley south of Reading, what we call main line points south of Reading and that traffic has moved via Bound Brook.

Q. Then that traffic would have been protected by the so-called "new line" agreement of the early days? A. Not with any agreement with the Baltimore and Ohio; no, sir. The "new line" agreement to which the Baltimore and Ohio was a party protected Reading in no particular with respect to business between the points that I have just indicated to New York. Besides, that agreement was only for a limited period. My recollection is that the last one made was in 1908, and expired in 1909, except as continued by common consent.

Q. Take Harrisburg and New York as the ends of traffic channel, through what junction points and over what lines has your traffic moved for many years? A. Via Allentown.

Q. And what lines? A. The Central Railroad of New Jersey.

Q. Was that traffic channel in any way protected by the "new line" agreement? A. No. No, that would not have been protected by the agreement under review any more than the territory south of Reading.

Q. Did the "new line" agreement cover anything except between Bound Brook and New York on the Jersey Central? A. No.

Q. Then for that portion of the line between Allentown and Bound Brook it is fair to say that there was no provision in the "new line" agreement? A. It is a fair understanding that there was absolutely no protection under the agreement referred to for any traffic interchanged between the Central Railroad of New Jersey and the Philadelphia and Reading, or between the Central Railroad of New Jersey, and the connections of the Philadelphia and Reading

west of the Reading territory. Moreover, if those agreements were construed to apply to that particular traffic it would be disadvantageous from a traffic point of view both to the Central Railroad of New Jersey, and the Philadelphia and Reading, in that it would have shortened the haul of the Central Railroad, and if held to apply to the traffic beyond the line of the Philadelphia and Reading, it would also have shortened the haul, and minimized the revenue thereon for the Philadelphia and Reading, and then in addition to that, there was quite a valuable traffic which had been developed and interchanged with the Central Railroad of New Jersey at Haucks and passing to the connections of the Philadelphia and Reading at Newberry Junction, commonly referred to as the Vanderbilt lines.

Q. How has that traffic which you have just referred to, to and from the Vanderbilt lines, always been routed? A. Always been routed by Newberry and Haucks.

Q. At Haucks it goes on the line of what railroad? A. The Central Railroad of New Jersey.

Q. And then goes to New York if destined there? A. New York and tidewater and points on the line of the Central Railroad of New Jersey between Haucks and New York proper, and north on the line of the Central Railroad of New Jersey as far as Scranton.

Q. Have you any business of any magnitude between Philadelphia and Scranton involving more than your own line? A. Yes, sir; there is quite an important general merchandise traffic between Philadelphia and Scranton. Philadelphia takes pride, or its merchants do, in supplying the wholesale merchants of Scranton with their goods, in that Scranton is a Pennsylvania city, and I think that perhaps the Scranton merchants purchase quite as extensively in Philadelphia as they do in New York, and as to the amount of that traffic, it is, generally speaking, via the Philadelphia and Reading to Bethlehem, and from Bethlehem to Scranton over the Central Railroad of New Jersey.

Q. Would it have been of any traffic embarrassment to you if the Jersey Central Railroad had come under the domination directly or indirectly of the Baltimore and Ohio

Railroad or the Pennsylvania Railroad? A. Yes, sir; I think it would. The development of traffic is dependent upon various given factors, one of which is service. The rate feature, of course, is another important factor. But, you may maintain a line of rates which are on a competitive basis, but without a perfect service, you may not be able to compete with your competitor, and traffic develops with a view to giving or providing a service that is in all respects equal to that of the competitor whose system may be one unit, is very sensitive, and is interfered with materially by any disturbance in its connections, the arrangement of train schedules or anything which would tend to delay the traffic at interchange points. So that the control of the Central Railroad of New Jersey going into unfriendly hands, that unfriendly disposition might be exercised to an extent which would absolutely destroy the harmonious workings that had previously existed and so disadvantage the traffic that it would be impossible to continue in competition, and, instead of your traffic expanding it would decline simply because the traffic, like some other things, always follows the line of least resistance. Our manufacturers would gradually drift away from us and perhaps locate on lines that could insure them a better service than we could under such circumstances.

Q. I note from the maps in evidence that you have a line running down to Shippensburg to the southwest. What business do you get at Shippensburg? A. We receive at Shippensburg the traffic that is developed on the line of the Baltimore and Ohio west of Hagerstown or Weaverton, or Cherry Run. We also receive at that point the traffic which is developed on the line of the Western Maryland Railroad.

Q. With what railroad is the Western Maryland principally in competition? A. The Baltimore and Ohio.

Q. Would it have had any effect upon your ability to interchange traffic with the Western Maryland had the Baltimore and Ohio acquired the Central Railroad Company of New Jersey? A. I think it would, for the same reasons that I have already explained. I think that the influence of such an acquisition would have changed the route of that

traffic to a delivery with the Baltimore and Ohio, or an interchange with the Baltimore and Ohio at some point on its line, to be in turn brought to the Reading at Park Junction, and cutting out the line of the Philadelphia and Reading entirely between Shippensburg and Allentown, which is approximately one hundred and thirty-five miles of haul.

Q. That is, the B. & O. would have been able to cut off, or "short haul" you, as traffic men say, by 135 miles? A. Yes, sir.

Q. And reduce your revenue? A. Yes, sir. So far as the Jersey Central is concerned, it would have the same effect on the Jersey Central in short hauling the Central for about sixty miles, that is, giving the Central a thirty mile haul from Bound Brook to points between Bound Brook and Jersey City, as against ninety miles from Allentown.

Q. To what extent has the Reading developed despatch line business across country to New England, cutting out Philadelphia and New York in recent years? A. We have, particularly with respect to New England, what is known as the Central States Despatch, which is a co-operative fast freight line, also the Blue Ridge Despatch, which is another line of the same character, and then there is the Southern States Despatch which operates in the same way. The Southern States Despatch operates in connection with the Norfolk and Western Railway getting the traffic and leaving our line at Shippensburg, and moving thence to Hagerstown over the Western Maryland to Hagerstown. And the traffic on that line is quite important, and the traffic handled into and out of New England via that route is of considerable volume.

Q. To what extent has the Shippensburg route increased in tonnage since your testimony in the last case, in 1908, in the amounts received? A. This statement refers to bituminous coal, and to nothing else but bituminous coal (referring to statement). In 1908, we received from the Baltimore and Ohio 3,809,029 tons, and in 1913, 6,845,340 tons.

Q. Was that a gradual, normal increase from the lower

traffic to the higher traffic during that interval? A. Yes, sir.

Q. What did you receive from the Western Maryland at Shippensburg in 1908? A. In 1908 we received from the Western Maryland at Shippensburg 1,023,878 tons. In 1913, 1,922,955 tons of bituminous coal.

Q. At Newberry Junction you say you had a connection with the Vanderbilt system, the New York Central system? A. Yes, sir.

Q. To what extent has the business over that junction increased since your last testimony? A. In 1908 we received at Newberry Junction from the New York Central or Vanderbilt lines 3,541,556 tons of bituminous coal, and in 1913 we received 4,120,480 tons of bituminous coal.

Q. What part of that B. & O. coal received at Shippensburg went to the Jersey Central at junction points other than Bound Brook in 1908? A. In 1908 of the total tonnage received from the Baltimore and Ohio, as above named, 822,765 tons were delivered to the Central Railroad of New Jersey at Allentown. And, in 1913, 1,636,447 tons.

Q. Of the Western Maryland coal received at Shippensburg? A. In 1908, 191,213 tons were delivered to the Central Railroad of New Jersey at Allentown, and in 1913, 322,651 tons.

Q. Of the coal from the Vanderbilt lines what was the routing of that? A. That was received at Newberry Junction, and, as to that which went to the Central Railroad of New Jersey, it was delivered to that line at Haucks.

Q. How much of that is being delivered to the Jersey Central at Haucks? A. In 1913 1,160,083 tons.

Q. Of this coal that came to the Reading from the B. & O. at Shippensburg, how much of it this last year was delivered at Port Richmond piers by the Reading? A. In 1913, 1,354,889 tons.

Q. And of the Western Maryland coal how much was delivered at Port Richmond piers? A. 224,574 tons.

Q. And of the New York Central? A. 954,731 tons.

Q. How much of that was delivered by the Reading at Port Reading piers? A. From the B. & O., 1,041,162 tons. From the Western Maryland, 560,945 tons. From the New York Central system, 529,655 tons.

Q. Is it fair to say that as to all this vast tonnage the Reading had no protection as to the routing and rates under the "new line" agreement? A. Absolutely none.

Q. And what points does the Philadelphia and Reading system of railways and the Central Railroad Company of New Jersey come in contact physically? A. We get together at all of these so-called interchange points, which I will enumerate, as follows: As interchange point Bound Brook and Winslow Junction, New Jersey, Bethlehem, Allentown and Haucks, Pennsylvania.

Q. Is there any community at Winslow Junction? A. No, sir.

Q. Is that anything more than a mere physical crossing of tracks? A. That is all. And a little interchange—there is interchange there—it is not important, however.

Q. Is there any community for which the two railroads could compete for traffic? A. No, sir.

Q. You spoke about having interchange at Bound Brook. How close to the village or the borough of Bound Brook does the Philadelphia and Reading Railway run? A. Within a mile and a half.

Q. Has the Philadelphia and Reading Railway at any time ever held itself out to serve the community of Bound Brook in any way? A. No, sir; only in connection with the Central Railroad Company of New Jersey as joint routes.

Q. Proceeding to Pennsylvania, I understand you have prepared certain exhibits showing the amount of interchange at these various points you have named for the last three or four years. A. I have prepared, in order to show concretely the insignificance of the business to and from these so-called competitive points as compared with the amount of interchange.

Q. Please hand counsel on the other side copies of this

statement and file the original with the Examiner as your answer to this question. A. I produce a statement showing merchandise tonnage carried to and from points named during the fiscal year ending June 30th, 1909. The statement is as follows:—

Stations.	To and From Local Points.	To and From Points on Other Railroads.	Total.
	Net Tons.	Net Tons.	Net Tons.
Bethlehem:			
Outward	135,655	34,593	170,248
Inward	421,456	192,765	614,221
Total	557,111	227,358	784,469
Allentown:			
Outward	20,912	4,210	25,122
Inward	24,199	11,978	36,177
Total	45,111	16,188	61,299
Tamaqua:			
Outward	12,935	3,020	15,955
Inward	38,634	25,140	63,774
Total	51,569	28,160	79,729
Lofty:			
Outward	64	257	321
Inward	154	1,178	1,332
Total	218	1,435	1,653
Haucks:			
Outward	292	300	592
Inward	442	488	930
Total	734	788	1,522

* Not a single ton shown in this column went to or came from a point on the Central Railroad of New Jersey.

Q. Is any of that traffic represented in that statement carried to or from a point on the Central Railroad of New Jersey? A. No, sir. Not a single ton showing on these columns went to or come from a point on the Central Railroad of New Jersey.

I produce the same kind of a statement for the year 1910, as follows:—

"PHILADELPHIA AND READING RAILWAY COMPANY.

Statement Showing Merchandise Tonnage Carried to and from Points Named, During Fiscal Year Ending June 30th, 1910.

Stations.	To and From Local Points.	To and From Points on Other Railroads *	Total
	Net Tons.	Net Tons.	Net Tons
Bethlehem:			
Outward	89,625	56,246	145,871
Inward	470,274	165,007	635,281
Total	559,899	221,253	781,152
Allentown:			
Outward	23,132	4,115	27,247
Inward	39,153	44,356	83,509
Total	62,285	48,471	110,756
Tamaqua:			
Outward	12,432	2,951	15,383
Inward	44,430	23,866	68,296
Total	56,862	26,817	83,679
Lofty:			
Outward	70	22	92
Inward	226	555	781
Total	296	577	873
Haucks:			
Outward	245	372	617
Inward	262	707	969
Total	507	1,079	1,586

* Not a single ton shown in this column went to or came from a point on the Central Railroad of New Jersey.

By Mr. Coudert:

Q. Does this statement include all freight of every kind and character? A. No, sir. Just what the statement shows, merchandise.

It is understood that the phrase "merchandise tonnage" excludes anthracite and bituminous coal and includes every other kind of traffic.

THE WITNESS:—I produce the same character of statement for the year 1911, as follows:—

"PHILADELPHIA AND READING RAILWAY COMPANY.

Statement Showing Merchandise Tonnage Carried to and from Points Named, during Fiscal Year Ending June 30th, 1911.

STATIONS.	TO AND FROM LOCAL POINTS.	TO AND FROM POINTS ON OTHER RAILROADS. *	TOTAL.
	Net Tons.	Net Tons.	Net Tons.
Bethlehem:			
Outward	82,725	47,588	130,313
Inward	496,849	161,980	658,829
Total	579,574	209,568	789,142
Allentown:			
Outward	24,040	4,546	28,586
Inward	39,716	72,563	112,279
Total	63,756	77,109	140,865
Tamaqua:			
Outward	13,918	3,023	16,941
Inward	38,432	16,195	54,627
Total	52,350	19,218	71,568
Lofty:			
Outward	36	29	65
Inward	43	126	169
Total	79	155	234
Haucks:			
Outward	202	314	516
Inward	310	802	1,112
Total	512	1,116	1,628

* Not a single ton shown in this column went to or came from a point on the Central Railroad of New Jersey.

I produce the same character of statement for the year 1912, as follows:—

"PHILADELPHIA AND READING RAILWAY COMPANY.

Statement Showing Merchandise Tonnage Carried to and from Points Named, During Fiscal Year Ending June 30th, 1912.

Stations.	To and From Local Points.	To and From Points on Other Railroads. *	Total.
	Net Tons.	Net Tons.	Net Tons.
Bethlehem:			
Outward	136,241	51,576	187,817
Inward	819,454	272,310	1,091,764
Total	955,695	323,886	1,279,581
Allentown:			
Outward	26,219	4,524	30,743
Inward	73,389	46,379	119,768
Total	99,608	50,903	150,511
Tamaqua:			
Outward	16,042	4,051	20,093
Inward	43,631	15,121	58,752
Total	59,673	19,172	78,645
Lofty:			
Outward	17	133	150
Inward	428	340	768
Total	445	473	918
Haucks:			
Outward	444	215	659
Inward	194	662	856
Total	638	877	1,515

* Not a single ton shown in this column went to or came from a point on the Central Railroad of New Jersey.

I produce the same character of statement for the year 1913, as follows:—

"PHILADELPHIA AND READING RAILWAY COMPANY.

Statement Showing Merchandise Tonnage Carried to and from Points Named During Fiscal Year Ending June 30th, 1913.

Stations.	To and From Local Points.	To and From Points on Other Railroads. *	Total.
	Net Tons.	Net Tons.	Net Tons.
Bethlehem:			
Outward	150,936	96,512	247,448
Inward	812,902	241,672	1,054,574
Total	963,838	338,184	1,302,022
Allentown:			
Outward	27,521	6,288	33,809
Inward	65,095	62,020	127,115
Total	92,616	68,308	160,924
Tamaqua:			
Outward	7,170	3,058	10,228
Inward	28,210	17,387	45,597
Total	35,380	20,445	55,825
Lofty:			
Outward	368	6	374
Inward	362	285	647
Total	730	291	1,021
Haucks:			
Outward	306	579	885
Inward	299	756	1,055
Total	605	1,335	1,940

* Not a single ton shown in this column went to or came from a point on the Central Railroad of New Jersey.

As showing the relative importance of the interchange compared with that of the business to and from those points, I have prepared a statement showing the total number of loaded cars delivered to and received from the

Central Railroad Company of New Jersey at all interchange points, and the ratio of cars delivered to cars received, for the years ending June 30th, as stated. The years are 1899, 1902, 1905, 1909 and 1913. The statement is as follows:—

	Received.	Per Cent.	Delivered.	Per Cent.
1899	125,439	33.4	250,311	66.6
1902	136,734	35.0	253,901	65.0
1905	137,508	30.9	307,968	69.1
1909	140,262	28.8	347,511	61.2
1913	206,596	30.5	470,596	69.5

I have also prepared a statement showing the total number of loaded cars delivered to and received from the Central Railroad Company of New Jersey at the several interchange points, and the ratio of cars delivered to cars received for years ending June 30th, as stated. This statement shows the exact number of cars interchanged at these several points as mentioned, while the previous statement was in years. The statement is as follows:—

	Received.	Per Cent.	Delivered.	Per Cent.
1905.				
Allentown	35,811	26.8	97,934	73.2
Bethlehem	18,399	54.7	15,208	45.3
Bound Brook	58,428	32.3	122,656	67.7
Haucks	16,950	21.3	62,753	78.7
Winslow Junction	7,920	45.7	9,417	54.3
1909.				
Allentown	35,423	23.9	112,709	76.1
Bethlehem	22,222	54.0	18,902	46.1
Bound Brook	60,398	29.7	143,318	70.3
Haucks	14,324	19.3	60,030	80.7
Winslow Junction	7,895	38.6	12,552	61.4
1913.				
Allentown	55,469	23.9	176,275	76.1
Bethlehem	30,966	56.6	23,768	43.4
Bound Brook	88,779	32.1	187,561	67.9
Haucks	20,592	22.7	70,092	77.2
Winslow Junction	10,790	45.5	12,900	54.4

Q. You have also prepared at my request a statement of earnings on merchandise traffic interchanged with the Central Railroad of New Jersey, showing the total of the Reading earnings and the ratio of the earnings on the traffic for-

warded to the ratio of the earnings of the traffic received, and showing also the increase during those years? A. Yes, sir.

Q. Will you please put that statement in evidence?

(Witness produced statement which is as follows):—

"STATEMENT

"of Philadelphia & Reading Railway Earnings on Merchandise Traffic interchanged with Central Railroad of New Jersey Showing

"A—Total Philadelphia & Reading Railway Earnings on Traffic Interchanged

"B—Ratio of Earnings on Traffic Forwarded to Earnings on Traffic Received.

"C—Ratio of Increase for Each Year over Previous Year.

	A	B	C
1909	$1,898,008.55	70%	
1910	$2,262,556.78	70%	19.21%
1911	$2,275,608.67	70%	0.58%
1912	$2,420,747.66	69%	6.38%
1913	$2,633,305.56	70%	8.78%"

Q. Is any of this vast tonnage covered by these exhibits competitive traffic? A. No, sir.

Q. Is it what may be called interchange traffic, all of it? A. So far as this exhibition of the volume of interchange is concerned it is absolutely all interchange traffic.

Q. That means traffic which has come in over one line, either one of them, and delivered to the other? A. Yes, sir. It originates on the line of the one destined to points on the line of the other, or beyond, or originates on the line of the other and is destined to points on the one, or to some point beyond.

Q. And none of that vast volume is competitive? A. No.

Q. All complimentary or supplementary service of one road to the other? A. Yes. The interchange could not be made unless it were complimentary. That is not as to the local business. As to these exhibits showing the local

business handled at these several interchange points, it is not competitive, for the reason that we are not in competition with the Central Railroad of New Jersey, if you please, between Bethlehem and points on the Central Railroad of New Jersey between Bethlehem and New York, so that the business that we show as having handled at that point is that which originates at some point on our own system or came to us from a connecting line west or northwest of our system.

Q. You say you are not competitive with the Jersey Central from Bethlehem to New York. Why is that? A. The lines serve entirely different territory. The roads diverge from those points. Here is the Central Railroad of New Jersey from Bethlehem going in an entirely different direction from that of the Philadelphia and Reading Railroad from Bethlehem. The same is true at Allentown and the same is true at Haucks. As matter of fact, there is no business at Haucks.

Q. Is there any community at Haucks? A. No, sir.

Q. That is simply like Winslow Junction, a crossing of the tracks? A. The employees have a hard time to get houses at those points.

Q. Can you by the wildest stretch of the imagination conceive of any point on the lines of the Jersey Central and the Reading, both as to which the two roads would be in competition from Bethlehem? A. I am afraid I would have to stretch the imagination to the breaking point. As a matter of fact there are no points that are competitive except those points to which there is no business. For instance, you might consider that the Central Railroad of New Jersey and the Philalelphia and Reading were in competition with each other between Bethlehem and Haucks. I am perfectly willing that the Central Railroad shall have all the business that there is coming from Bethlehem to Haucks.

Q. Are you perfectly willing the Lehigh Valley should have it? A. Yes, sir.

Q. Would that be a roundabout inoperable route via your line? A. Yes, sir; it would.

Q. I am speaking merely from a traffic standpoint? A. Yes, sir; but still I would not like to lose sight of the fact that there is no business going from Bethlehem to Haucks and it is hardly worth while to enlarge upon the feasibility of one route as against another.

Q. Is your answer true or not as applied to these other points of contact. Is there any point of competition, or could there be between the Jersey Central and the Reading between points common to the two roads? A. No; nothing that could be considered momentous or important in any respect.

Q. As respects anthracite coal traffic, is there any anthracite coal traffic originating at these various points of contact that you have described? A. No.

Q. Is there any bituminous coal originating at those points? A. No.

Q. Is it proper then to say that the statistics as to merchandise traffic cover the traffic which offers at these points? A. Yes, sir.

Q. The two railroads, the Reading system and the Central Railroad of New Jersey, come very close together at Haucks and Tamaqua, do they not? A. Yes, sir.

Q. In what way are they separated in the vicinity of Tamaqua? A. By the intervention of what always has been known as the Panther Creek Railroad rails and is now understood to be or said to be the Lehigh and New England.

Q. The Government has put in as one of its exhibits what is known as the Ruley map of 1908, and I notice from the legend on this map that the Philadelphia and Reading Railway Company is marked "A" and the Central Railroad of New Jersey is marked "C," and that then in a further elaboration of the legend the various collieries and various regions are named and are given these indicative letters to show upon the rails of which railroad the various collieries in the region are located. Starting with the Carbondale district in the Northern Field, I observe that there is no "A" or "C" in that district, indicating that the Philadelphia and Reading Rail-

way and the Central Railroad of New Jersey, neither one of them, reach that district? Is that now the fact? A. It is.

Q. Coming to the second district known as the Scranton District, still in the Northern Field, I find that there is no "A" and no "C" within that district, indicating that neither of the railroads, the Philadelphia and Reading Railway or the Central Railroad Company of New Jersey, serve collieries in that district? Is that the fact? A. That is the fact.

Q. Coming to the third or Pittston district, still in the Northern Field, I observe that there is no "A" and no "C" indicating that neither the Philadelphia and Reading Railway nor the Central Railroad Company of New Jersey serve that district? Is that the fact? A. That is the fact.

Q. Coming now to the fourth district, the Wilkes-Barre district, still in the Northern Field, I observe that there is no "A" indicating that there is no service rendered by the Philadelphia and Reading Railway in that district, but that there are several "C's" indicating that several collieries in that region are served by the Central Railroad of New Jersey? Is that the fact? A. That is correct; yes, sir.

Q. Coming next to the Plymouth district, I observe the same conditions which obtained in the Wilkes-Barre district, namely, that the Philadelphia and Reading Railway serves no colliery, and the Central Railroad Company does? Is that the fact? A. That is the fact; yes, sir.

Q. Coming next to the Green Mountain district, in the Eastern Middle Coal Field, I find that there is no "A," indicating that the Philadelphia and Reading Railway serves no colliery in that region, but there are "C's," indicating that the Central Railroad of New Jersey does so serve collieries in that region? Is that the fact? A. That is the fact, yes, sir.

Q. Coming to the next district, number seven, Black Creek District, in the Eastern Middle Coal Field, I note there is no "A," but there is one "C," indicating that on

the rails of the Central Railroad Company of New Jersey there is a colliery in that district? Is that the fact? A. Yes, sir, it is.

Q. Coming next to district number eight, the Hazleton district, still in the Eastern Middle Coal Field, I find that there are neither "A's" nor "C's," indicating that neither the Philadelphia and Reading Railway nor the Central Railroad of New Jersey serves that district? Am I correct in that? A. Yes, sir.

Q. Coming next to number nine, the Beaver Meadow district, I find there are no "A's," indicating that the Philadelphia and Reading Railway Company serves no collieries in that district, but that there is a "C," indicating that the Central Railroad Company of New Jersey serves one colliery in that district. Is that correct? A. Yes, sir.

Q. Coming next to the Western Middle Field, the East Mahanoy district number ten, I find that there are no "C's," indicating that the Central Railroad Company of New Jersey does not serve that district, but that there are a number of "A's," indicating that the Philadelphia and Reading Railway does serve that district? Is that correct? A. That is correct.

Q. Coming next to the West Mahanoy district, No. 11, still in the Western Middle Coal Field, I find that there are no "C's" indicating that the Central Railroad Company of New Jersey does not serve that district, and that there are numerous "A's" indicating that the Philadelphia and Reading Railway Company does serve that district? Is that correct? A. Yes, sir; that is correct.

Q. I come next to the Shamokin district, No. 12, still in the Western Middle Coal Field, I find there are no "C's," indicating that the Central Railroad Company of New Jersey does not serve that district and that there are numerous "A's" showing that the Philadelphia and Reading Railway Company does serve that district? Is that correct? A. That is correct.

Q. Coming next to the Southern Coal Field, section No. 13, or the Panther Creek district, I find numerous "C's,"

indicating that the Central Railroad Company of New Jersey serves that district? Is that correct? A. That is not correct; no, sir. The Central Railroad Company does not serve any collieries in the Panther Creek, as I understand it.

Q. There are no "A's," however, indicating that the Philadelphia and Reading Railway Company does not serve that district? Is that correct? A. The Philadelphia and Reading Railway Company does not serve that district.

Q. Coming next to the fourteenth, the East Schuylkill district, there are no "C's." I find there are no "C's," indicating that the Central Railroad Company of New Jersey does not serve that district and that there are numerous "A's," however, indicating that the Philadelphia and Reading Railway Company does serve that district. Is that correct? A. Yes, sir; that is correct.

Q. Coming next to fifteen, the West Schuylkill district, I note that there are no "C's," indicating that the Central Railroad Company of New Jersey does not serve any colliery in that district, and there are several "A's," indicating that the Philadelphia and Reading Railway Company does serve collieries in that district? Is that correct? A. That is correct.

Q. Coming next to No. 16, the Lorberry district, still in the Southern Coal Field, I note that there is a single colliery which is served by the Reading Railway Company, and that is indicated by the letter "A?" Is that correct? A. Yes, sir.

Q. There is no "C," indicating that the Central Railroad Company of New Jersey does not serve that district? Is that correct? A. That is correct.

Q. Coming to number seventeen, the Lykens Valley District, I observe there is no "C", indicating that the Central Railroad Company of New Jersey does not serve any colliery in that district, but that there are several "A's", indicating that the Philadelphia and Reading Railway does serve collieries in that district? Is that correct? A. That is correct.

Q. As a matter of traffic conditions, has there ever

been in the anthracite coal regions any practice of a railway serving collieries of anthracite coal other than the collieries located physically upon its own lines? A. No, sir.

Q. Is there any traffic policy generally obtaining among traffic managers of railways as respects the relation of the rates to industries on their own lines and the rates to or from similar industries on connecting lines on the same kind of commodity? A. Yes, sir. In a general way, the policy is, so far as the rate structure is concerned, to give advantage to the traffic which is originated and can be distributed locally on the line of the road on which the business originates.

Q. Take the steel furnaces. Do you adopt a traffic policy which creates a rate structure more favorable to placing steel products from furnaces on your lines at destinations on your lines than from furnaces in Pittsburgh or Wharton, New Jersey to the same destination on your lines? A. Yes, sir. The joint rate, wherever such a rate is necessary, is not made upon as low a basis as the local rate is made. Of course, the instance that you have particularly referred to may be unfortunate for the comparison.

Q. I want to take the most unfortunate one. A. The rate on pig iron, if you please, from furnaces at Wharton, New Jersey, to any given point on the Philadelphia and Reading Railway, could not, under any circumstances, be as favorable to the manufacturer at Wharton as would be the rate from a blast furnace on the line of the Philadelphia and Reading Railway to the same destination.

Q. Take it on anthracite coal. Is there any traffic condition which would make it normal or natural or usual to make a joint rate on anthracite coal to Philadelphia and Reading points the same as your local rate? A. No. I would consider it simply economic waste. There is no reason at all why the rates on anthracite coal from some other region or from some other road carrier should be as low as the rate from the Schuylkill region, if we were

having difficulty to find a market for the anthracite that was produced on the line of our own road.

Q. That is, you would regard it as a sound traffic policy to prefer to that extent shippers of any commodity on your own line over the shippers of some other territory coming into your territory on your line? A. Yes, sir; not only a sound traffic policy, but a sound business policy.

By MR. COUDERT:

Q. And you do do that? A. Yes, sir.

By MR. REYNOLDS:

Q. Do you do that on all kinds of traffic? A. Yes, sir. To the extent that we can.

Q. You spoke of an economic waste of such traffic routing. Does that sort of traffic routing involve any amount of clerical and managerial work in the through routing and joint accounting and through billing and interchanging of cars *per diem* accounting? A. Yes, sir. All those features are involved in the handling of joint traffic.

Q. All of them are avoided by confining your operations to your own line? A. Yes, sir. But in addition to the economic waste, there is also the loss of revenue which is involved in the same proposition.

Q. That is, your joint rate would always mean that your division would be a little less than your local? A. The joint rate will never yield us the same revenue for the same haul that the local rate yields us.

Q. Take the extremities of your line and the Jersey Central line where they come closest together in the coal regions along the dividing plateau between the water shed on the Lehigh and the water shed on the Schuylkill are there any active coal operations of any importance other than those of the Lehigh Coal and Navigation Company? A. Only one that I can recall.

Q. That is Coleraine? A. That is Coleraine, yes, sir.

Q. In order to reach Coleraine, how does the Central Railroad Company of New Jersey come in? A. They come in via Lofty and use our tracks for a short distance,

and then in on the tracks of the Coleraine Colliery Company.

Q. So that as to that small operation they are dependent upon the Philadelphia and Reading Railway Company to reach that colliery, and do not reach it independently over their own rails? A. That is correct.

(Adjourned until Friday, March 20, 1914, at 11 o'clock, A. M.)

PHILADELPHIA, Friday, March 20th, 1914, at 11 o'clock A. M.

Present—The Examiner; Messrs. Coudert, Kingsbury and Gordon, Special Assistants to the United States Attorney General, for the Government; Messrs. Heebner, Reynolds, Turner, Marvel and Beitler, representing the defendants.

Examination of JOHN F. AUCH, resumed:—

By MR. REYNOLDS:

Q. Have you at my request prepared a statistical statement showing the character of the tonnage of the Wilmington and Northern Railroad Company for typical years prior to the lease and subsequent to the lease of its property to the Reading? A. I have.

Q. Please hand that statement to the Examiner and to counsel for the Government. (Witness produced the following statement):—

"PHILADELPHIA AND READING RAILWAY COMPANY.

Statement Showing Separately, except as noted, Tonnage of

(*a.*) Anthracite Coal.
(*b.*) Bituminous Coal.
(*c.*) Other Freight.
(*d.*) Total Tonnage.

Carried by Wilmington and Reading Railroad Company and its Successor, the Wilmington and Northern Railroad Company during fiscal years stated as follows:

	(a) Anthracite Coal.	(b) Bituminous Coal.	(c) Other Freight.	(d) Total Tonnage.
	Tons.	Tons.	Tons.	
*1870	15,744	19,774	45,685	81,203
†1871	45,388	34,339	93,516	173,243
†1872	68,267	43,153	153,153	264,573
‡1877	50,373	37,018	130,439	217,830
‡1881	122,226	63,105	275,118	460,449
‡1885	182,868	¶	338,414	521,282
‡1890	302,779	¶	481,481	784,260
‡1894	265,810	¶	510,222	776,032
‡1898	393,450	¶	779,269	1,172,719
§1900	141,246	218,043	1,242,340	1,601,629
§1905	112,145	370,806	1,444,438	1,927,389
§1910	208,981	979,964	1,760,413	2,949,358
§1913	191,234	900,139	1,965,330	3,056,703

* 10 months ending October 31.
† Year ending October 31.
‡ Year ending December 31.
§ Year ending June 30—operated under lease by Philadelphia & Reading Railway Company.
¶ Included in anthracite tonnage."

Q. In the years 1885, 1890, 1894 and 1898 I observe that the reports group all coal together, both anthracite and bituminous? A. Yes, sir. That is due to the fact that during those years there was no separation made as between anthracite and bituminous coal sold.

Q. As to the other years the books of the company indicate the separation? A. Yes, sir.

Q. Have you ever had any connection whatever with the Central Railroad Company of New Jersey, or have you now? A. None whatever, no, sir.

Q. Is your traffic department in any way a part of the traffic department of the Central Railroad of New Jersey, or *vice versa?* A. It is not.

Q. Do you maintain your separate soliciting agencies as you had them before 1901? A. Yes, sir.

Cross examination.

By Mr. Coudert:

Q. The rates on anthracite coal on your railroad have been the same or practically the same for some time, have they not? A. Generally, yes, sir.

Q. Do you know for how long they have been practically the same? A. I should say fifteen or twenty years, with, of course, the exceptions that some unimportant changes or readjustments may have taken place during that period. I would not say that all of the rates had been absolutely the same for that period.

Q. Therefore, in reaching those rates the elements that were taken into consideration were elements existing largely at that time, and which may or may not have changed since? A. Rates do not always change when there is an element that justifies the change.

Q. No elements, therefore, have supervened which, in your judgment, as a railroad man and rate maker, justified any change, and, consequently, there has been no change? A. Yes, sir; I think there have been some intervening elements that would have justified.

Q. Other than those trifling changes to which you referred? A. In a more general way.

Q. Explain. A. As I said a moment ago, it does not follow because there are changes in elements or factors which affect the rate that the rate is changed in accordance with those elements or factors.

Q. The price of coal is necessarily largely dependent upon the rates, is it not? A. I do not think it has anything to do with it.

Q. Will you explain why you think that? A. The price of coal is a commercial proposition pure and simple. The price of coal is certainly not regulated by the freight rate.

Q. Nor affected by it? A. It may be affected to some extent, but, it is not the controlling factor.

Q. Is it not a very large factor? A. No; I would not say that it was a controlling factor.

Q. Let me put you this supposititious case. Suppose the

coal was transported to tidewater by one of the roads free of charge for freight rate, do you suppose that would not affect the price of the coal? A. I do not think it would.

Q. You do not think so? A. I do not.

Q. So that your opinion is that the freight rate does not practically enter into the cost of coal to the consumer for any substantial amount? A. No. I said before I do not think it is the controlling factor. Let me explain. I assume that you are talking about our freight rate on anthracite coal?

Q. Yes. Freight rates generally. You can confine it to your own if you please. A. Supposing we carried coal from the anthracite regions to tide at Philadelphia free, and considering the comparatively small portion of the anthracite coal that we carry to tide, the rate is not changed by other transportation companies, do you suppose that the producers are going to sell their coal at Philadelphia at any less price simply because the Philadelphia and Reading Railway elect to carry that coal free?

Q. I do not know. I ask you. A. I say no.

Q. So that, in your opinion, if the Philadelphia and Reading Railway, struck by some impossible philanthropic motive, decided to transport all its coal to tidewater for nothing at all, that would not affect the price of coal at tidewater? A. It might have some slight effect upon it. It would not determine the price of coal at tidewater.

Q. Do you mean that a shipper who could transport his coal to tidewater for nothing, or at a greatly reduced freight rate, compared with shippers on other railroads, would not have great advantage in the market? A. I am not discussing the advantage of the shipper at all.

Q. Could he sell his coal cheaper? A. I think probably he could if he elected to do so, but, the question is, whether he would or not.

Q. Do you not know, as a matter of fact, the two great elements fixing the price of coal are the cost of production and the cost of transportation? A. They are, in a measure.

Q. In what measure? You are a practical railroad man of many years' experience. Tell me in what measure. A. I should say the cost of transportation is not the controlling factor in determining the price of coal. There are other considerations from the commercial point of view of fixing the rate. That is proven by the fact that the rates on anthracite coal from the mines, as a whole, taking the entire region vary considerably, the rates are not the same from all the mines to given destinations, and never have been, yet, we frequently find that the price of coal, that is, the retail price of coal, at points where the freight is less, is really higher than at points where the freight rate is greater.

Q. What is the freight rate on a ton of coal from your mines to Port Reading, New York, say prepared sizes, large sizes? A. Do you mean the tide rate?

Q. The tide rate. A. $1.55 on the prepared sizes.

Q. What does the coal sell for when it gets there? A. I do not know.

Q. But you know what it ordinarily sells for? A. No, sir. I am not in the sales business.

Q. That coal sells for five dollars. One dollar and fifty-five cents is a very considerable proportion of five dollars, and yet, you contend that the price which the shipper has to pay does not affect the price which the consumer has to pay, and that if that coal, instead of paying $1.55, went without paying anything, it would, nevertheless, cost the consumer $5? A. That may be.

Q. Of course, if that is so, it reverses all economic beliefs and postulates, and it would be interesting to know your reason for that deduction? A. I have never known the freight rate on any commodity to determine the market value of the production or the commodity.

Q. Is it your idea that the price of coal is fixed by other factors entirely than the freight rate, and, therefore, that is not to be taken into consideration? A. That is not the controlling factor; no, sir.

Q. Would you say it was so completely fixed by agree-

ment among the coal companies, that whether it costs five dollars a ton to transport it, or whether it cost nothing to transport it, the price to the consumer of the coal would be the same? Is that your position? A. I would say that commercial conditions determine the commercial value of the commodity—market conditions and the difference between what the commodity is sold for, and what it pays in freight transportation, is the price that is realized for the commodity by the seller.

Q. I do not know whether I understand you. Do you mean that the price is fixed by the cost of the product plus the transportation and the profit? A. No, sir. I mean that the market conditions whereby this commodity is undertaken to be marketed determine the price. The freight rate on transportation is fixed; that is not a movable factor. The freight rate does not vary with every variation of the price of the commodity.

Q. But does it not enter into the market as one of the two major elements making the price as fixed in the market? A. If there are no other factors to be considered, I assume that the price of the coal at tidewater would be the cost of production plus the transportation. But, I do not think that that is the condition perhaps nine times out of ten.

Q. State some of the other conditions that supervene. A. Suppose I had a million tons of coal that I wanted to sell, and I could only find a market for it in New York. I could find a market for it in New York, but when I go into the New York market I find that the only price that I can get for that coal is $4.50 a ton, I know perfectly well there is no use of my going to the transportation company and asking for a reduction in the rate of $1.55. I have simply got to pay the $1.55 and deduct it from the price which I can get for the coal at New York.

Q. How is that $4.50 made up and comprised? What are the basic elements that enter into that, as matter of fact? A. I do not think it pays any attention to the basic elements at all. I am simply trying to sell my coal.

I have got that coal and I want to get rid of it. I can get no more for it than the market will give me. I would not go to some other coal company and ask them to reduce their price of coal or put up their price of coal or anything of that sort.

Q. Would you say that if a shipper on one line could send his anthracite coal to New York at fifty per cent. of the rate which the other shippers on other lines had to pay, that that would not enable him to successfully compete against them? A. I would say that if one particular shipper on any particular line could send his coal to New York for fifty per cent. less than I could send it there, that there was an opportunity for that particular shipper to realize that difference in the price of his coal.

Q. And to put you out of business if he chose to undersell you? A. Yes; he might do that, if he had money enough.

Q. If the railroad company owns the coal mines and the freight rate on coal is reduced, can it not perfectly well recoup that loss by raising the price of coal? A. Could it raise the price of coal beyond the market price?

Q. By raising its price of coal to the highest point that it can get, of course? A. I do not think that the coal company would undertake to fix its price above the market value of the commodity. I do not just see where the possibilities of one recouping against the loss of the other comes in.

Q. You do not think, then, as Vice-President of the Reading, and all your great knowledge of its workings, that if the freight rates were reduced on anthracite coal, the Philadelphia and Reading Coal Company could raise its price of coal? A. What they could do, of course, is problematical. Nobody can tell what they would do. That is all I can say.

Q. Could they do it? A. You understand, I do not pretend to have any voice in the fixing of price of anthracite coal, either at the mines or at New York, or Boston, or anywhere else. Just what would be done in a matter of

that sort, from a commercial viewpoint, of course, I do not know.

Q. The president of your company made the following statement: "We shall not reduce the rate," (referring to the Reading), "but, of course, if the reduction in your rate interferes with our business, the coal company will be compelled to lower the price of coal." Do you dissent from that statement of it? A. Was that statement made as the president of the railroad company, or was it the statement of the coal company?

Q. It appears upon page 314 (printed page 161) of the record in a letter from Mr. George F. Baer to T. P. Fowler, on the paper of the Philadelphia and Reading Railroad Company, President's Office, Reading Terminal, Philadelphia, October 31st, 1906. (Copy of letter referred to handed witness.) A. I would understand that letter to mean that so far as concerned the freight rate, conditions did not warrant a reduction therein. And, as to what might happen with respect to the price of coal, that was conjectural.

Q. The president states that in the event of another railway lowering its freight rates, that the Coal Company will be compelled to lower the price of coal. Do you dissent from that proposition or not? Are you in agreement with the president, or are you against him?

MR. REYNOLDS:—That statement is not susceptible of a statement of economic principle. That is not what the word "compelled" means there in the context. A. The president evidently foresaw that the freight rate was not going to be lowered, and, if necessity arose to have the coal company change its price of coal in order to meet those conditions, that is, to enable it to market its coal in the territory where the reduced rate prevailed, the Coal Company might be compelled to change its price of coal.

By MR. COUDERT:—

Q. Then a reduction, if it did not meet the competition in one way, that is, by reducing its rate on freight, would meet it in another by reducing its price of coal? Is not that exactly what he means, and is not that exactly what would

happen? A. That is what is suggested there. I do not know that that is what is meant.

Q. You have no reason to consider the President was not right in that matter? A. I do not know. I think it is largely a question of opinion.

Q. You said a moment ago you were not a coal man. I understand he is. He is President of the Coal Company, is he not? A. I do not know whether he is a coal man or not.

Q. He is President of several coal companies? A. He is President of the Philadelphia and Reading Coal and Iron Company.

Q. You would follow his judgment on the question of prices of coal? A. I have no reason to take exceptions to it.

Q. And never have? A. No.

Q. I read you the following statement and ask you if it does not represent the true situation as regards the rate between freight and cost of production, and the statement is taken from a letter of Mr. T. P. Fowler, President of the Ontario and Western, to Mr. Baer, and appears in the record at page 315 (printed page 162). He says, "I am convinced that the division of the market price between the producer and the transporter, as expressed in tariff needs readjustment at once. I use the term 'division' because the business since its inception, has been conducted on the basis of percentage (*i. e.*, division) and that fact is universally known and has been admitted by both sides in every controversy over the rate." That is true, is it not? A. It may have been true then. It is not true now.

Q. The date of that is 1906. I understand that was true then, but is not, in your judgment, true now? A. I say it may have been true then.

Q. But is not true now? A. No.

Q. Kindly explain to me the conditions that have taken place since that that make that proposition inapplicable. A. I think I stated on the 17th, as I have stated a few moments ago, we cannot maintain a changeable freight schedule under existing law or conditions.

Q. You did so state, and I understand you also to state that the rates have been practically the same for fifteen or twenty years back, and I am referring to the time, 1906, when the rates were as they are now. So there has been no change, has there? A. I did not suppose you were referring to the rates of some other carrier when you asked me as to the general stability of rates with respect to the Philadelphia and Reading Railway.

Q. I was asking you about rates generally. Is not that statement I have read of all rates, including those of the Philadelphia and Reading Railway, and, if not, what change has taken place in the Philadelphia and Reading Railway rates since 1906? A. The changes that I have previously referred to, and I am not by any means sure that those adjustments that are referred to in that correspondence were applicable so far as the Philadelphia and Reading Railway was concerned. I was not in general charge of the rates at that time, and I did not undertake to fix or determine the freight rates on anthracite coal.

Q. Then you have not any information on that one way or the other and do not care to commit yourself on it? Is that your attitude? A. As to the time prior to when I took charge, I have no information at all as to what the effect of the methods then pursued with respect to the freight rate may have been.

Q. But you think that since the time you took charge, although there has been no substantial change in the freight rate, yet the freight rate has a different effect on the price of coal then the time anterior to your taking charge? That is what I understand you to say? A. I would not say that there was no change. That refers to a tide rate absolutely. I would not say that there had been no change in the tide rate, and I did not intend to say that there had been no change in the tide rate when I said generally the rates had been in effect for fifteen or twenty years.

Q. What do you mean by "tide rates?" A. The rates that are referred to in that correspondence. That is, those

rates that were adjusted on the selling basis of the coal at tide.

Q. You are speaking now of the sixty-five per cent. contracts, are you not? A. That is the way it is commonly referred to; yes, sir.

Q. Is it not a fact that in 1906, the freight rates on anthracite coal of the Philadelphia and Reading Railway Company from the coal fields to tidewater were similar to what they are now? A. I think so.

Q. If they were not you are perfectly at liberty to correct it from the statistics. I have no desire to overstrain your memory, but, I understand that to be the fact. Assuming that the rate from the Schuylkill regions on anthracite coal to tide at Port Reading was at that particular time the same as it is to-day, what effect would that have on coal shipped from the same regions to New York tide? You have been forty years in that business. If you will answer my question I will be very much obliged.

(Question read to the witness.) Say yes or no to that, and if you desire to confer with counsel as to your recollection as to those rates, I have not the slightest objection. A. It is not necessary to confer with counsel on that particular point. It is simply a question of rates.

Q. Look over the tariffs. A. The only way I could answer it would be to look over the tariffs. My impression is that the rate in 1906, that is, the Philadelphia and Reading Railway rate to tide at that time was the same as it is now.

MR. COUDERT:—If it was not I am perfectly willing that you should correct it.

Q. Then that being the fact, how is it that Mr. Baer at that time was troubled because he feared other roads would reduce their rates, and that might compel him to lower the price of coal? That would be true to-day, would it not? A. Yes, sir. There is that situation to contend with always, with the variations in the freight rates as between one locality and another on any given commodity, if the seller wants to go into a particular market where those conditions

prevail, he has got to meet those commercial conditions and adjust his prices.

Q. If of two roads starting somewhere in the coal fields generally and both going to tide at New York, the rates on the one were considerably lower than the rates on the other, would not the shippers prefer the one on which the rates were lower? A. I assume that they would, if it was possible for the shipper to use the line over which the lower rate prevailed.

Q. Would that apply to all shippers, or only to the so-called independent shippers who have no relations with the railroad? A. It would apply to any shipper I should think. I have never found a shipper yet that was not willing to take advantage of the lowest possible price.

Q. I assume that such a shipper would of necessity, unless there were other circumstances. Have you any doubt that the Philadelphia and Reading Coal and Iron Company would ship its anthracite to tidewater by the route giving them the cheapest freight rate? A. I do not think I understand that question.

(Question read to the witness.)

A. If it were physically possible for them to avail themselves of such a route, I would assume so.

Q. In other words, they would act precisely the same as any other shipper, would they not? A. Certain. I should think so.

Q. Do you know whether or not, as matter of fact, the rates to New York at tidewater on the roads running from the coal fields to New York tidewater are not similar? A. There are variations in the rates from the various fields.

Q. Can you tell me in a general way, without going into detail, what is that difference? Take the railroads going direct to New York tidewater, or having termini there, what are the differences in their rates; how substantial? A. Perhaps you would prefer if I would offer in answer to that inquiry certified copies of the tariffs. I will file this sheet with the Examiner.

"RATES ON ANTHRACITE COAL TO TIDEWATER SHIPPING POINTS IN NEW YORK HARBOR AND VICINITY.

The following are the net rates, as published by the various carriers, and include dumping into vessels alongside piers:

	Prepared.	Pea.	Buckwheat.	Smaller Sizes.
Rates as published by Erie R. R. to Edgewater and Weehawken, N. J.	$1.60	$1.45	$1.30	$1.15
Rates as published by C. R. R. of N. J. to Elizabethport Pier (Elizabethport), N. J., and Port Johnson, N. J.	1.55	1.40	1.20	1.10
Rates as published by C. R. R. of N. J. to Communipaw Pier (Jersey City), N. J., and Port Liberty, N. J.	1.60	1.45	1.25	1.15
Rates as published by the Pennsylvania R. R. to South Amboy, N. J.	1.40	1.25	1.15	1.15
Rates as published by the Lehigh Valley R. R. to Perth Amboy, from the Lehigh and Schuylkill Regions.	1.55	1.40	1.20	1.10
Rates as published by the Lehigh Valley R. R. to Perth Amboy, from the Wyoming Region	1.40	1.30	1.15	1.10
Rates as published by the D. L. & W. from collieries and washeries located on Bloomsburg Branch at Scranton, South Scranton, Taylor and on Main Line each of Junction of Bloomsburg Branch in Scranton, to New York Lighterage Station, N. J.	1.33	1.24	1.09	.98
Rates as published by the D. L. & W. from producing territory other than indicated above	1.58	1.43	1.28	1.13
Rates as published by the P. & R. Ry. to Port Reading, N. J.	1.55	1.40	1.25	1.10
Rates as published by the P. & R. Ry. to Port Liberty, N. J.	1.60	1.45	1.30	1.15"

Q. I note in looking over that detail and written answer here that the rate as published by the Central Railroad of New Jersey to Elizabethport Pier and Port Johnson is similar to that of the rate as published by the Philadelphia and Reading Railway Company, Port Reading, New Jersey. That is the fact, is it not? My question refers to the prepared sizes. A. This statement shows that the rate on prepared sizes as published by the Central

Railroad of New Jersey and the Philadelphia and Reading is the same, $1.55.

Q. If the rate on the Central Railroad of New Jersey was reduced by fifty per cent., we will say, is there any doubt that the anthracite that now comes over the Philadelphia and Reading to Port Reading would go over the Central to Communipaw and Port Liberty? A. Any doubt?

Q. Have you any doubt of it? A. I certainly have. How would it get to the Central Railroad of New Jersey?

Q. Do you mean to say that it could not get from the coal fields to the Central Railroad of New Jersey by any railroad connection now existing? Is that your answer? A. That would be my answer; yes, sir.

Q. And that that is an impossibility? That it could not originate on the Philadelphia and Reading and go over the Panther Creek or over any other railroad to any junction point with the Central? A. The Central Railroad of New Jersey, or no other railroad, would publish rates from points on the Philadelphia and Reading Railway, so that any change in the tariff of the Central Railroad Company of New Jersey could not affect the the rates.

Q. I did not ask you that. A. You are talking about the rates.

Q. If the rates on the Central Railroad of New Jersey were to become one-half of what they were on the Philadelphia and Reading, would it not be to the interest of shippers on the Philadelphia and Reading to pay the local rates on the Philadelphia and Reading up to a junction point with the Central and proceed thence to tidewater? A. It might be considered in the interest of the shippers to do that sort of thing, if there was any possibility of the thing happening that you assume.

Q. Therefore, if in the event of this assumption of a very strong reduction in rates on the part of the Jersey Central, the coal which now goes to Port Reading would go to the Central terminals, it is, therefore, merely a question of rate lowering or rate changing, as to which

that coal would take? A. Yes, sir. We have no right to assume that the Central Railroad Company of New Jersey, the Lehigh Valley, or any other road is going to reduce its rates fifty per cent. or ten per cent., if you please, if the present adjustment of rates is no more than is necessary to pay for the cost of transportation, plus a reasonable profit for contingencies.

Q. Assuming the fact that there was a rate lowering on the Central, would it not simply be a question how great that lowering was, as to whether all the coal would not go that way rather than by the Philadelphia and Reading? A. There might be some very serious question, even under those circumstances and with that assumption, as to whether all the coal would go that way. It would depend very much on the capacity of the Central Railroad of New Jersey to take care if it, and its terminals. Just as was said in the case of the Philadelphia and Reading a few moments ago, you might carry coal free and still you would not be able to handle the business.

Q. Then it would be a question as to whether the railroad offering the lower freight had the necessary facilities for doing the business—that and nothing else? A. I do not know.

Q. It is obviously so, is it not? A. No.

(Question repeated.)

A. Of course, the freight rate, as previously stated, is not always the controlling factor.

(Question repeated.)

A. The railroad having the lower freight rate, and having adequate facilities, may still not be able to secure business. This is dependent upon the service or the cost of getting the traffic to the railroad making the lower freight rate.

Q. By the cost of getting the traffic you mean the transportation cost? A. Yes, sir.

Q. So that again would be merely a question of freight rate, whether the transportation cost to the Central in the instance I have put, plus the rate on the Central would be less than the total rate of the Philadelphia and Reading, would it not? A. It is not conceivable that that situation could ever arise.

Q. Assuming that the situation could arise, will you kindly answer my question. (Question read to the witness.) A. Yes, sir; if we assume that the impossible is going to arise.

Q. Do you say "impossible" because of the fact that these coal companies are owned by the railroads? A. No, sir.

Q. And, therefore, they would be oblivious to the interests of the consumers? Is that what you mean by "impossible?" A. No, sir.

Q. Kindly explain what you mean. A. I am simply stating my opinion, based upon my experience in the matter of transportation and making the rates therefor.

Q. You think impossible any serious reduction of rates on roads other than your own? A. I do not think that all of the traffic people are insane.

Q. Is it not a fact that there might be a reduction? A. Accidents happen.

Q. And some reductions have, from time to time, been ordered by the Interstate Commerce Commission, not by accident, but by design? Is not that so? You know that they have been ordered, do you not? A. Will you separate the reference to the Interstate Commerce Commission from the first part of that question.

Q. Some reductions in rates have been ordered by the Interstate Commerce Commission, have they not? A. Affecting anthracite coal they have not. Such reductions as ordered by the Interstate Commerce Commission do not, however, to my mind, indicate the possibility of reductions such as is assumed.

Q. Do I understand you correctly then in stating that you believe it to be beyond the realm of possibility that any railroad should volunteer to reduce its rates? A. I do, if the property is under the management of reasonable business men.

Q. Do you know whether some of this anthracite coal is not so limited by contract between the shippers and the various roads that it is tied down to particular routes? A. I do not know.

Q. You do not know anything about that? A. No.

Q. You have no personal knowledge whatever of any such contracts? A. No.

Q. Does your recollection go far enough back to enable you to tell upon what basis the present freight rate on anthracite coal was made? A. To tide?

Q. Yes. A. I think, so far as our rate is concerned, it was made with the idea of getting a proper compensation for the service involved, having in mind the competitive rates from other regions or from the same regions via other lines.

Q. Who were those competitors to whom you refer? A. The Pennsylvania Railroad is the principal competitor.

Q. And there were some others, were there not? A. As to the Lehigh district, the Lehigh Valley.

Q. Were there not some others? A. Not in the Schuylkill Region; no, sir.

Q. Were there not some others that were competitive to tide as far as rates go? A. If you consider the whole field.

Q. Precisely. A. There are also the Central Railroad of New Jersey, the Lackawanna and the Erie, but I do not think that the rates via those particular lines from the different regions determined the rate from the Schuylkill region so far as we were concerned.

Q. You spoke the other day of various junction points I think between the Central and the Reading. You mentioned, if I remember, Bound Brook as one of them? A. Yes, sir.

Q. Do the Central and the Reading compete between Bound Brook and the New York tidewater to-day? A. No, sir.

Q. Did they ever? A. Yes, sir.

Q. Are they possible potential competitors? A. I should say not; no, sir.

Q. Could not freight from Bound Brook to the tidewater, anthracite coal for instance, go either by the Central or by the Reading to their respective termini? A. There is no anthracite coal, to my knowledge, that originates at Bound Brook.

Q. But, great quantities of anthracite coal go via Bound Brook on both of those roads, do they not? A. Go through Bound Brook do you mean?

Q. Via Bound Brook—by the way of Bound Brook. A. There is anthracite coal from the mines in the Schuylkill region to Port Reading in connection with the Port Reading Railroad, if that is what you refer to. And yet, I presume that there is also coal that passes through Bound Brook that originates on the Central Railroad of New Jersey, that passes through Bound Brook going to its terminals at New York tidewater.

Q. So that, as far as coal, generally speaking, is concerned, from the coal fields to tidewater, it might reach tidewater either by the Central via Bound Brook, or by the Reading via Bound Brook? A. It might under favorable conditions. But, it would be unreasonable to suppose that the Philadelphia and Reading Railway would send its anthracite coal from the Schuylkill regions to the tidewater at New York, either via Bound Brook or any other junction point in connection with the Central Railroad of New Jersey, and not use its own rails to such destination.

Q. Would it not be, as I have understood you to heretofore testify a question of higher or lower freight rates? A. No, sir.

Q. Why not? A. You do not seem to appreciate the fact that it is not customary, never has been, and probably never will be, for the Central Railroad of New Jersey, if you please, to establish rates from points on some other carrier's road.

Q. If that custom were violated then it would be a question of which road furnished the better rate would it not? A. It might not only violate the custom, but violate the law as well.

Q. In what way? A. The Central Railroad Company of New Jersey, under the Interstate Commerce Law, cannot legally publish rates on the Philadelphia and Reading Railway.

Q. You have stated that if the Central Railroad Com-

pany assumedly reduced its rates sufficiently, that shippers on the Philadelphia and Reading would pay the local rates over the Philadelphia and Reading and ship over the Central to tidewater? A. I said that that would be possible, all other things being equal; adequate facilities. The mere fact that there is a point of contact between two railroads does not prove that there are sufficient facilities for an interchange at those points to accommodate a very large volume of business.

Q. Then I understand your testimony to be that the question of whether the anthracite went via Reading or went via the Central would be a question of rate and facilities? That is a fact, is it not? A. I do not quite see the force of your reference to Bound Brook in that connection.

Q. Go by the Central or the Reading to tidewater. Eliminate Bound Brook if you choose. A. If by any stretch of imagination it were possible to assume that the Central Railroad of New Jersey might so reduce its rates from the anthracite coal regions and mines on its line, and apply those reduced rates over the junction points in the coal regions, making possible a combination of rates by the use of locals, from the mines on the Philadelphia and Reading to those junction points, plus those of the Central Railroad of New Jersey from those junction points, the coal might move via those junction points, not via Bound Brook. I think that in that event there might be a remedy, however, which would negative the effect of any such combination.

Q. You spoke in your direct examination of furnishing credit to shippers. Do you remember in a general way the maximum of those credits? Do they extend into the millions? A. No, I would not undertake to say what the extent of those credits was in dollars and cents.

Q. Not precisely, but tell me within fifty thousand dollars. A. My reference to credits was as to time rather than the amount.

Q. Explain to me something about what your method is in extending credit and the amount? Do you extend

credit to shippers for unlimited amounts? A. Yes, sir; under satisfactory conditions.

Q. Do you require any security? A. In certain cases—in some cases; yes.

Q. Let us take the coal, for instance, to be specific. Do you require any security from the shippers to whom you give these credit facilities? A. I would prefer not to answer that question, because I do not know. It is really an accounting matter, and I do not keep in touch with that feature.

MR. REYNOLDS:—We will have the Comptroller on the stand and he can be asked that question.

By MR. COUDERT:

Q. Do you remember, in a general way, whether any security is taken from the shipper to whom considerable credits are extended? A. I think there are instances in which bonds are required.

Q. But you do not know the detail? A. No.

Q. Do you know anything about the details of your credit arrangements for time? A. Our usual time requirement is thirty days.

Q. That is your usual requirement? A. No; it varies according to the ——

Q. What is the maximum? A. We undertake to fix the maximum at thirty days. That may be varied from according to conditions, the nature of the business and the facility of settlements.

Q. Do you know yourself of any shipper who has been given a credit on freights amounting to upwards of two millions of dollars? A. Without any respect to the limit of time?

Q. Without any respect to limit? A. A shipper might do a business of two millions of dollars in thirty days. Of course, in that case.

Q. Without any limit of time, do you know of anybody who got a credit extending over a series of years amounting to upward of two or perhaps three millions of dollars? A. I think that is a matter of detail that I would not know.

Q. Is it not a pretty large detail, a credit to a shipper

running through years of millions of dollars? A. It would all depend on the volume of the business.

Q. Are any such credits in any such amount extended to any of the bituminous coal companies? A. We have no bituminous coal companies on our line.

Q. So you do not extend to bituminous shippers any credit? A. We have no bituminous shippers on our line.

Q. Do you extend credit to bituminous shippers or not? A. No; we do not.

Q. You have stated, I believe, that as to credit arrangements the Philadelphia and Reading Coal and Iron Company stands on no different footing than other shippers. A. Other shippers of the same magnitude.

Q. Is there any other shipper of anything like the same magnitude? A. No; hardly in tonnage for a given period.

Q. Is it not a fact that you have extended credit to the Philadelphia and Reading Company for millions of dollars, and extending over very long periods of time? A. I do not know as to the amounts or the exact period.

Q. You have no data as to that? A. No. That would be an accounting matter.

Q. If you were informed that there had been such credits as I have mentioned extended to the Philadelphia and Reading Coal and Iron Company, would you still say that they had been treated on a parity with other shippers? A. That is my understanding; yes, sir; that all shippers are treated alike, with the exception of such circumstances and conditions as may justify a variation as between one or another.

Q. Then you think in the case of the Philadelphia and Reading Coal and Iron Company there may have been such differentiating circumstances? A. That would have to be determined entirely by the volume of traffic as shippers as compared with another shipper who might require like accommodations.

Q. Do you know of any shipper who has been allowed indefinite credits running into the millions of dollars for any indefinite time? A. I think I stated that I did not.

Q. You do not know of any? A. No.

Q. You were good enough to put in evidence at the re-

quest of your counsel a statement showing the shipments of anthracite coal, page 1052 (printed page 510) of the record from the Schuylkill region by various shippers over the Philadelphia and Reading Railway. In that statement you find the first column "P. & R. C. & I. Co.," and in the second column you find "Other Shippers," and I ask you whether those other shippers are all the so-called independent shippers, by which I mean shippers having no connection with railway companies? A. I do not know as to possible connection with railway companies. There are no connections between those shippers and the Philadelphia and Reading Railway Company.

Q. Do you know whether that column "Other Shippers" includes coal from the Great Lehigh and Wilkes-Barre Company's mines? A. It includes no coal whatever from the Great Lehigh and Wilkes-Barre Company's mines, because there are no mines of the Great Lehigh and Wilkes-Barre Coal Company in the Schuylkill region or adjacent to the tracks of the Philadelphia and Reading Railway Company.

Q. And it does not include any coal of the Lehigh Coal and Navigation Company either, does it? A. It might include coal from the Lehigh Coal and Navigation Company, if we receive coal from that company.

Q. Do you know whether you do receive coal from the Lehigh Coal and Navigation Company? A. Yes, sir; we do receive some coal.

Q. In appreciable quantities? A. Not compared with those figures here.

Q. Some coal? A. Some coal; yes, sir.

Q. In answer to Mr. Reynolds' question, on page 1053 (printed page 511) you say "There are quite a number of independent operators. I file with the examiner, and also give to Government's counsel a list of those independent operators," which appears on the next page. A. Yes, sir.

Q. Are those independent operators the operators that have shipped these fifteen million, three thousand and fifty tons of coal, or are there included in that figure coal shipped by others than those mentioned in your list? A. This statement on page 1052 (printed page 510) was intended to show

exactly how much of the total coal carried was received from the Philadelphia and Reading Coal and Iron Company, and in the second column, that which was received from other shippers. As indicating who the other shippers were, this statement shown on page 1054 (printed page 511) was offered.

Q. Does that statement exhaust all the shippers whose coal is included under the head "Other Shippers" on page 1052 (printed page 510)? A. This is intended to be a statement of the independent collieries and washeries located adjacent to the Philadelphia and Reading Railway.

Q. So that this list of independent collieries on page 1054 (printed page 511) is not the total number of shippers included in the column "Other Shippers" on page 1052 (printed page 510)? A. There may be some coal included in this column "Other Shippers" received from operators not mentioned in this list.

Q. Then I take it in that total from other shippers of fifteen million odd there may be a very considerable proportion received from shippers other than the shippers mentioned on page 1054 (printed page 511) of the record? Am I right about that? Including Lehigh Coal and Navigation? A. There is some coal included in there. This is a statement of all the coal that was carried.

Q. Among those other shippers are there not, as matter of fact, corporate shippers whose stock is owned by the Philadelphia and Reading Coal and Iron Company, or do you not know about that? A. I do not know.

Q. So that all you know is that the other shippers are shippers other than the Philadelphia and Reading Coal and Iron Company itself as a separate company? A. Yes, sir. That is what the statement purports to be.

Q. You have spoken of coal of the Lehigh Coal and Navigation Company being included among other shippers. As matter of fact, could not all the coal from the mines of the Lehigh Coal and Navigation Company go to tidewater over the Reading Railway Company or the Jersey Central? A. You mean tidewater at New York?

Q. Yes. A. There is no coal from the Lehigh Coal and Navigation Company that goes to tidewater at New York over the Philadelphia and Reading Railway.

Q. Is there any reason why it should not, that you know of? A. It does not originate on our road.

Q. What road does it originate on? A. On the railroads of the Lehigh Coal and Navigation Company.

Q. The so-called Panther Creek, now called the Lehigh and New England Railroad? A. Yes, sir.

Q. Is there any reason why the coal of the Lehigh Coal and Navigation Company originating on the Panther Creek Division of the new Lehigh and New England Railroad should not go to New York tidewater over the Reading rails? A. The Lehigh Coal and Navigation Company could better answer that question than I could.

Q. I am not asking you why it does not go, but I am asking you whether there is any physical reason why it should not, as a matter of railroad transportation pure and simple, without reference to any contracts or arrangements. A. So far as the physical situation is concerned, it could be shipped over the Philadelphia and Reading to Port Reading, provided the Panther Creek road or the Lehigh Coal and Navigation Company delivered the coal to us at Tamaqua.

Q. And it could equally go over the Central Railroad of New Jersey under similar circumstances to tide water? A. If there is any goes to tidewater, I think it goes via the Central Railroad.

Q. Do you not know, as a matter of fact, it is tied up by contract, and has to go? A. No; I do not know.

Q. You have never heard of that contract? A. I have heard it talked about. I haven't any occasion to know the details of it.

(At one o'clock a recess was taken until two o'clock P. M.)

Q. Referring again to page 1052 (printed page 510) of the record, and to the column headed "Other Shippers." Can you tell me whether under that head is included the Fulton Coal Company, the Locust Gap Improvement Company, the Tremont Coal Company, the Mammoth Vein Coal and Iron Company, the Delaware Coal Company, the Preston

Coal and Improvement Company, any or all of them? A. Those are not included in this list, are they?

Q. They do not appear in your list on page 1054 (printed page 511), but my question is whether they are included under the head "Other Shippers," on page 1052 (printed page 510)? A. If those collieries are not located on the Philadelphia and Reading Railway there are no shipments from those collieries included in that column.

Q. You do not know whether those collieries are on the Philadelphia and Reading Railroad or not? A. I assume they are not, inasmuch as this assumes to be a correct list of all the independent collieries.

Q. These collieries I have mentioned are not independent, and my question is whether or not you know whether they are included under the head "Other Shippers?" A. I repeat that they are not included if they are not on this list as independent shippers or shippers other than the Philadelphia and Reading Coal and Iron Company.

Q. You have testified that under the head "Other Shippers," on page 1052 (printed page 510) are shippers whose names do not appear on pages 1054 and 1055 (printed page 511), and I ask you whether among those other shippers whose names do not appear on those two pages are included the companies I have mentioned. A. There are no shipments from other shippers in addition to those named on this list, unless possibly the Lehigh Coal and Navigation Company's shipments, who are not mentioned on this list.

Q. I understood you to testify before the recess that there were other shippers than those on that list, and the Lehigh Coal and Navigation Company, included under the head "Other Shippers" on page 1052 (printed page 510). Am I right or wrong about that? A. I think you are wrong.

Q. Then am I now right in saying that you now testify as an actual fact that the term "Other Shippers" on page 1052 (printed page 510), includes all those shippers on pages 1054 and 1055 (printed page 511), plus the shipments of the Lehigh Coal and Navigation Company, and none others? A. Yes, sir.

Q. And that you are sure about? A. Yes, sir.

Q. You have looked it up? A. Yes, sir.

Q. State whether the coal shipped by the companies that I have just mentioned, the Fulton, &c., or any of them, are included in the first column "P. & R. C. & I. Co." A. No, sir.

Q. Do you know about that? A. Not unless the coal was purchased by the P. & R. Company from those collieries. If it is, it is included in the first column.

Q. You do not know whether or not it was? A. No, sir.

Q. In your statement on page 1052 (printed page 510), there are the words, "Statement showing shipments of anthracite coal from the Schuylkill Region, etc." What does that "etc." cover? A. That "etc." means simply this, that there might have been included in "Other Shippers" coal from the Lehigh Coal and Navigation Company, which is not considered in the Schuylkill region. That is the only exception. That was the only reason for putting "etc." in there. All the other shipments are from the Schuylkill region.

Q. Other than the Lehigh Coal and Navigation Company? A. Yes, sir.

Q. Can you tell me upon what lines the Fulton, Locust Gap, Tremont, Mammoth Vein, Delaware, and Preston Coal Companies are situated? A. I could not without looking it up.

Q. That you do not know? A. No.

Q. Does this statement on page 1052 (printed page 510), include the tonnage actually used by the railroad in its operations? A. No, sir.

Q. Do you remember, in a general way, what that tonnage is? It is very considerable, is it not? A. I do not recall exactly. I think it is two or three hundred thousand tons.

Q. Was it 142,617 tons for the month of November? That is correct, is it not? A. This statement is not supposed to include any coal except that which actually paid freight, and is supposed to balance, in a general way, with the coal tonnage reported as carried in our annual reports.

Q. Can you tell me what was the next largest shipper

to the P. & R. C. & I. Co. of all the shippers mentioned in these two statements? A. I couldn't tell you from memory; no, sir.

Q. You have furnished some tables to show a difference in the revenue per ton on freight exclusive of anthracite and revenue per ton upon anthracite freight. What is the difference between the cost of ordinary merchandise freight, which you have referred to, for transportation, and the cost of transporting anthracite? A. I have not figured that out.

Q. There is a very considerable difference, is there not? A. Not so much difference between the cost of transportation of anthracite and the cost of transportation of merchandise as there is between the revenue received from the merchandise as compared with the revenue on anthracite.

Q. Is not the revenue received from the anthracite something in the nature of a third of your total revenue? A. Yes, sir; about thirty per cent. now.

Q. Is not a great deal of the freight that you mentioned more or less small parcels not taking a whole carload? A. Yes, sir.

Q. Does not that add enormously to the expense of transportation? A. Not in proportion to the higher freight rate.

Q. The anthracite, of course, is transported in cars, and the cars themselves are moved? A. Yes, sir. So is the merchandise.

Q. But the merchandise does not necessarily go by the carload; that is to say, it goes in broken lots, taking only part of a car, does it not? A. Not the bulk of it. The less than carload traffic is a small proportion of the whole.

Q. Can you furnish us with a statement showing the exact cost of transporting the freight referred to in your statement on page 1058 (printed page 513), as compared with the cost of anthracite on page 1050 (printed page 509)?

Mr. Reynolds:—The witness cannot furnish such a statement. The only people who can do that are the United States Postal authorities.

By Mr. Coudert:

Q. Then you do not know what it cost you? A. We have not been able to ascertain that yet. There have been

a number of experts attempted it, but they have not gotten very much further than we have on that.

Q. So that you make your rates in the dark, not knowing what the cost is? A. No; we have a little sunshine on them.

Q. And, erring on the side of plentiful profit, I take it? A. Erring; no; there is no erring about it.

Q. The profit is sure, is it not? A. No.

Q. It has been? A. The error, if any, is that we do not get sufficient profit to cover all the contingencies that arise. Especially, the expense of these enormous investigations.

Q. The totals would indicate that there are about three times as much other freight carried per mile as there is anthracite; that is correct, is it not? A. I do not know. I have not reduced those to one mile. (Referring to table.) There is, according to this table here, about three times as many tons of other freight one mile as anthracite coal one mile. That, however, is due entirely to the difference in the average distance of anthracite coal carried as compared with the average distance of the freight carried. Of course, the tonnage of other freight carried is shown in one of these exhibits here.

Q. It is shown right there in that exhibit you have in your hand, is it not? A. Yes, sir; as to one mile.

Q. There is a great deal of bituminous coal, as you testified in your direct examination, going to New York tidewater over your railroad. I take it that that coal could get over other railroads to the tidewater, could it not? A. That particular coal does not go over other roads. There is a good deal of bituminous coal goes over the roads to tidewater. That statement of mine only refers to the coal that we carried.

Q. Would it not be quite possible for that coal to reach tidewater by other roads than yours? Is there any physical difficulty that you know of? A. Yes, sir. It is highly competitive. We have to exert ourselves very considerably to get that coal to go over our road.

Q. And it might go by the other roads if you did not exert yourselves? A. Yes, sir.

Q. It could go by the Jersey Central if the Reading did not exert itself to hold its traffic, and does to some extent? A. In point of fact, it does go over the Jersey Central, some of it.

By Mr. Kingsbury:

Q. You testified at the last session about the Wilmington and Northern Railroad at some length. Will you tell me just what physical connections with other railroads the Wilmington and Northern makes, and at what points? A. The Wilmington and Northern Railroad at the present time has a physical connection with the Baltimore and Ohio Railroad at Elsmere Junction, in the vicinity of Wilmington. It has a physical connection with the P., W. & B. Railroad at Wilmington. There is also a physical connection between the Wilmington and Northern and the Pennsylvania Railroad at Coatesville. There is a physical connection at Chadd's Ford between the Pennsylvania system and the Schuylkill Division of the old P., W. & B., at Chadd's Ford Junction.

Q. With what does it connect at Birdsboro or High's Junction? A. The Philadelphia and Reading Railroad.

Q. Is that both at Birdsboro and High's Junction? A. Yes, sir.

Q. Those are two separate points? A. Yes, sir.

Q. How far apart are they? A. About seven miles.

Q. Which is the nearer to Reading? A. High's Junction.

Q. That is about three miles from Reading? A. Yes, sir; about three miles—two miles and a half. Birdsboro is about nine miles from Reading.

Q. With what other railroads does the Reading make physical connection at or near Reading itself? A. None.

Q. Does it not connect with the Pennsylvania in any way? A. No, sir.

Q. Or with any other railroad? A. No, sir.

Q. How near does it run to the tracks of any other railroad at Reading? A. It runs quite close. The Pennsylvania and the Reading tracks through the City of Reading are within five or ten feet of each other.

Q. So that physically a connection could easily be made there? A. Yes, sir; physically; provided there were no operating objections to it. That is another question.

Q. There is no great difference of grade or level or anything of that kind to interpose any special engineering difficulty to such a connection? A. Are you talking about a connection between the Philadelphia and Reading and the Pennsylvania Railroad, or between the Wilmington and Northern and the Pennsylvania?

Q. I am talking about a possible physical connection between the Reading and the Pennsylvania at or in or about the City of Reading. A. There is no necessity for any such connection. There never has been.

Q. I ask you whether there would be any great engineering difficulty in the way of making such connection? A. I am not an engineer, and I do not know of any engineering obstacle in the way to making such a physical connection.

Q. When coal comes down from the coal fields to Reading over the Reading Railroad and comes as far as Reading, what possible routes are there for it to take? I am speaking now merely physically and not as matter of traffic practicability, to go south, to the southern cities? For example, can it go over your own line to Philadelphia, and then down over your line and the B. & O., or could it go on your line to High's Junction and then down over the Wilmington and Northern to Wilmington, or Elsmere Junction, and then south? A. As you know, there is the road of the Wilmington and Northern from High's Junction to Wilmington, and also from Birdsboro to Wilmington. It is not, however, a feasible route for any extensive tonnage.

Q. On account of the physical limitations of the railroad? A. Yes, sir; and certain grades and physical limitations of the road. It would be necessary practically to rebuild the road. There are, of course, traffic reasons why that is not a feasible route.

Q. Does a certain amount of anthracite go that way, as a matter of fact? A. No, sir.

Q. From Birdsboro or High's Junction to Wilmington? A. To Wilmington proper, yes; but not for south of Wilmington.

Q. But if it got as far as Wilmington, it could go further south? A. That would depend on the wishes of the connecting lines at Wilmington to receive the coal at Wilmington from the Wilmington and Northern at that point.

Q. Can a railroad refuse to receive freight from a shipper? Is it not obliged to take up to the limit of its capacity and carry all the freight that is tendered? A. You are not going to put the Wilmington and Northern in the category of a shipper, are you?

Q. The original shipper could dictate the route, could he not? A. Yes; he could dicate the route at his own expense.

Q. When freight is transferred from one railroad to another as part of a through route, there is a division of the freight revenue from that freight as between the two roads, is there not? A. Certainly.

Q. Can either railroad, either the original forwarder, or the subsequent forwarder, dictate that to the other railroad, or is it a matter of agreement? A. It is a matter of conference. It must be a matter of agreement, of course. I cannot determine what the Baltimore and Ohio, if you please, will accept from any given junction point for its part of the service out of a joint rate. Nor can the Baltimore and Ohio dictate to me what I shall receive as compensation for our share of the service of a joint rate. It must be mutual.

Q. It is purely a question of agreement between them? A. Yes, sir.

Q. Neither one can dictate to the other? A. No.

Q. I show you an exhibit which was put in evidence by Mr. Reynolds at the last session, being an agreement between the Philadelphia and Reading and the Wilminton and Northern, dated May 16, 1879, and I ask you to glance

over the paragraph beginning at No. 2, which was not spread upon the record, and which I shall put upon the record to-day. (Agreement handed witness.) After you have read it, I will ask you a question about it. Have you read the agreement? A. Yes, sir.

Q. State whether, as a practical, experienced railroad man, that agreement does not indicate the possibility that anthracite coal or any other freight might be routed over either the Wilmington and Northern or the Philadelphia and Reading for a portion of the way between the same points? A. You are referring to destinations beyond Wilmington, of course.

Q. To any destinations? A. As to Wilmington, there was no question about it. As to the destination beyond? This agreement was made prior to the connection with the Baltimore and Ohio Railroad, and it was made as between the Wilmington and Northern and the Philadelphia and Reading Railroad Company. It obligated no one, it could not possibly obligate the connections of the Wilmington and Northern Railroad. As provided in here, if the Wilmington and Northern was not in position to carry out the terms of this agreement, it failed absolutely. There is no obligation on the part of the Reading to route the freight that way unless the Wilmington and Northern could induce its connections to facilitate such an interchange.

Q. But it recognized the possibility of alternative routes between various points? A. Yes, sir. The possibility. That is all we are dealing with here—great possibilities. It was in furtherance of the dreams of the promoters.

Q. Its effect would be to prevent price cutting in favor of either of these alternative routes as against the other? A. What do you mean by "price cutting?"

Q. Rate cutting. A. The remedy has been enacted for rate cutting. What is the use of discussing rate cutting now? No matter what the possibilities were when that contract was made, that was before the enactment of the Interstate Commerce Law.

Q. My question was directed to the conditions as they existed at that time and the relations which that agreement

embodied? A. There is nothing in this agreement, as I recall it, which refers to rates at all.

Q. I think you are mistaken about that. "That it will not charge or co-operate with any other railroad transportation line in charging rates via its railroad line or lines for freight excepting mail matters, originating at Wilmington or any other point on the Chesapeake Peninsula, and destined for final delivery by rail for any point north of Birdsboro, accessible by a route of which a railroad line or lines of the Reading Company shall form the whole or part, which shall be lower than the rates current at the same time via a route formed in whole or in part by the line of the Wilmington Company between the point of origin and the point of delivery of the said freight where the distance by the the latter route is shorter than by the former." A. That was simply to insure to the Wilmington and Northern road that the rate, that is, that the Reading could not insist upon a rate adjustment via this route which would disadvantage this route in competition with some other. That is all there is to that.

Q. And has nothing to do then with the rates by the route over the Wilmington and Northern as compared with the rate by the route over the Reading direct? A. No, sir.

Q. Are you sure of that? A. Some of these agreements made back in the seventies are pretty hard to understand in the light of present conditions. But, I look upon this as a traffic agreement pure and simple, and it insures, that is, as I said before, so far as the Reading is concerned, it will co-operate with the Wilmington and Northern to the extent of the ability of the Wilmington and Northern to provide for its business, the joint rate shall not be higher in connection with the Wilmington and Northern than it is via some other route.

Q. Would you say that agreement was for the benefit of the Wilmington and Northern, or for the benefit of the Philadelphia and Reading, or purely a matter of mutual benefit? A. It sets out to be mutual.

Q. Which would you say it did actually benefit? A. I do not think that agreement ever amounted to very much

so far as the Wilmington and Northern Railroad is concerned. If certain things would happen, certain things would be accomplished. If those certain things did not happen, the agreement did not amount to anything.

Q. It provided for certain things that did happen, did it not? It provides in the beginning for trackage rights for the Wilmington and Northern over the Philadelphia and Reading between Birdsboro and Reading? That went into effect, did it not? A. Yes, sir. That was simply because the Wilmington and Northern Railroad had established its terminal in the city of Reading. It had no means of getting to and from those terminals in the city of Reading except by the employment of some other company's tracks.

Q. That is, the Wilmington and Northern had no other means? A. No, sir.

Q. So far this was for the benefit of the Wilmington and Northern and not for the benefit of the Reading? A. Yes; to save the Wilmington and Northern from the expense of constructing its own tracks and terminals in the city of Reading.

(Mr. Kingsbury desires spread on the record portion of the agreement referred to as follows):—

"2. In the event of the happening of the contingency on which the grant aforesaid is to take effect, all freight, excepting mail matter originating on or received by the Berks County Railroad or any other line of the Reading Company at any point north of Birdsboro which reaches Reading by rail or which starts from Reading by rail and is destined for transportation thence by rail to and for delivery at Wilmington or some other point in the State of Delaware or elsewhere in the Chesapeake Peninsula, and which (excepting grain intended for exportation by water and iron or manufactures of iron from Birdsboro when the said iron or manufactures thereof are transported for exportation by water) is not intended for exportation from the Chesapeake Peninsula (including Delaware) to any point in the United States or elsewhere shall be forwarded by the Reading Company either from Reading or Birdsboro at the option of the Reading Company, via the line of the Wil-

mington Company, provided the distance between Reading and the point of final delivery is shorter via the line of the Wilmington Company, either separately or in connection with some other line or lines of transportation, thence via a line or lines owned, operated or controlled by the Reading Company either separately or in connection with another or other lines of transportation; it being understood that when such freight is destined for a point not on the Wilmington Company's line, the latter is to make such arrangements as may be necessary to secure the transfer with reasonable dispatch of the freight to its ultimate destination, but no merely temporary difficulty in effecting or carrying out the said arrangements shall relieve the Reading Company from its obligation in the premises after such difficulties have been removed. The Reading Company also agrees that it will not charge or co-operate with any other Railroad transportation line in charging rates via its railroad line or lines for freight excepting mail matters, originating at Wilmington or any other point on the Chesapeake Peninsula, and destined for final delivery by rail for any point north of Birdsboro, accessible by a route of which a railroad line or lines of the Reading Company shall form the whole or part, which shall be lower than the rates current at the same time via a route formed in whole or in part by the line of the Wilmington Company between the point of origin and the point of delivery of the said freight where the distance by the latter route is shorter than by the former. The Wilmington Company also agrees that it will not charge or co-operate with any other transportation line in charging rates for the transportation of freight by a route formed in whole or part of the Wilmington Company's line between points which are accessible by a route formed in whole or part by a line or lines owned, operated or controlled by the Reading Company lower than the rates current at the time via a route between the said points formed in whole or part by a line or lines owned, controlled or operated by the Reading Company when the distance by the latter route is shorter than by the former. Provided, however, that this obligation of the Wilmington Company

shall not apply to rates for the transportation of any mail or of iron or manufactures of iron from Birdsboro to New York via a water route from Wilmington in connection with the line of the Wilmington Company.

"All freight of whatever kind received north of Birdsboro on the Berks County Railroad or any other railroad line of the Reading Company and destined to any point on the line of the Wilmington Company whether such point shall be the final point of delivery or a point of transfer to another line—and all freight received on the line of the Wilmington Company and destined to any point on the Berks County Railroad or any other railroad line of the Reading Company north of Birdsboro whether such point shall be the final point of delivery or a point of transfer to another line, (excepting freight to which the limitation or restriction on the grant of way aforesaid shall be applicable), which shall be interchanged between the two companies either at Reading or Birdsboro (as the Reading Company may from time to time elect) shall be transported by them over their connected route intervening between the point of receipt and the point of delivery, as aforesaid, under joint rates to be by them from time to time established and the sums received under such joint rates shall be "pro rated" between them, that is apportioned with reference to the distance over which each company shall have transported the said freight: customary charges for car service being made when the cars of either company have performed such service on the road of the other—but no allowance, either for losses on laterals or on other account shall be permitted:—"

Q. Was it a disadvantage to the Reading Railroad? A. It was no particular advantage.

Q. Was it in any way a disadvantage? A. No; it was not a disadvantage when you consider the whole of the Wilmington and Northern Railroad, the building of the Wilmington and Northern Railroad into Wilmington, with its connection at Birdsboro, was no particular advantage in making this connection at Reading, because it had its connection at Birdsboro, but the building of that road and the making of the connection at Birdsboro gave the Philadelphia

and Reading Railroad Company an opportunity to interchange business with that road and establish joint rates to and from Coatesville and Wilmington and points on the Philadelphia and Reading Railroad, and, to that extent, it was an advantage which enabled the Reading road to participate with the Wilmington and Northern in the development of tonnage traffic to and from those points, that is, Birdsboro and Wilmington. So far as Coatesville was concerned, there was no other way by which the Philadelphia and Reading could do business at Coatesville. It gave it an alternate route into Wilmington, but at the time that the Wilmington and Northern was built, and before it was built, it had the opportunity of exchanging business with the P. W. & B. road to Wilmington, Chester and the points intermediate, Baltimore and Washington and different points.

Q. Do you know what advantage was gained, or disadvantage was escaped, by the purchasers of the Reading Railroad system in the foreclosure of 1893-96, by repudiating and refusing to go on with this agreement? A. No, sir. No particular advantage, except that there was no necessity for it.

Q. By repudiating it, they left the Wilmington and Northern cut off from direct access to Reading, did they not? A. That might be another assumption. As a matter of fact, the connection was continued and they did business.

Q. But not under the trackage right? A. Yes, sir; I think under the same arrangement.

Q. They made a new trackage agreement, did they? A. No, sir; the terms of the agreement so far as that trackage privilege was concerned to and from the Wilmington and Northern terminal at Reading, remained operative.

Q. So that the practical conditions remained the same, although the paper agreement was not accepted adopted by the purchasers? A. I think so. That is more particularly an operating question, however.

MR. REYNOLDS:—The result was the agreement was repudiated, but, as matter of sufferance, the Wilmington and Northern was permitted to run over the Reading's tracks to the station in Reading, and is still permitted.

By Mr. Kingsbury:

Q. Has the Reading system any special or peculiar traffic relations with the Lake Shore and Michigan Southern? A. No, sir.

Q. Has it with the Baltimore and Ohio? A. Peculiar and special traffic relations?

Q. Yes. A. No, sir.

Q. Does it exchange a great deal of freight with the Baltimore and Ohio? A. Yes, sir.

Q. More than with most of its other interchanging railroads? A. No; I think not. Unless you take into consideration the bituminous coal. Of course, the bituminous coal adds very considerably to the tonnage received from the Baltimore and Ohio Railroad. There is no interchange, however, of bituminous coal, it all moves in one direction.

Q. But you receive a large amount of tonnage from the Baltimore and Ohio? A. Including the bituminous coal; yes; we receive considerable.

Q. Has the Reading system in any of its ramifications any special relations with any of the producers of bituminous coal? A. The Reading Railroad Company?

Q. The Reading system in any of its ramifications. The Reading Company or the Reading Railway Company. Or is that something outside of your knowledge? A. I know nothing about anything except the Reading Railway.

Q. So far as the railway is concerned, it has no such affiliations? A. No.

Q. You spoke in your testimony on Tuesday about making affiliations with certain manufacturers for the promotion of this tonnage in bituminous coal. What did you mean by that exactly—by "affiliations?" A. I meant these railroad connections or affiliations by which we were enabled to open up to the manufacturers in the Schuylkill Valley channels for the receipt of bituminous coal to be used in their manufacturing. No affiliations, except by encouragement as between the Philadelphia and Reading Railway or Railroad Company, and the manufacturers. What I wanted to make clear was that it was by reason of these connections, for instance, with the Beach Creek at New-

berryport Junction, the Western Maryland at Shippensburg, and the Baltimore and Ohio—that those avenues or channels for the receipt of bituminous coal were opened up.

Q. The Reading Railway has some competition, has it not, for anthracite coal tonnage? You are in competition with some other railroads? A. From a transportation point of view?

Q. From a transportation point of view. A. Yes, sir.

Q. What is your principal competitor? A. The principal competitor in the Schuylkill Valley is the Pennsylvania Railroad. Next to the Pennsylvania Railroad is the Lehigh Valley. Those are about the only two systems that do compete with us for anthracite coal in the Schuylkill region.

Q. Do their tracks actually reach any of the same collieries as your tracks? A. I am not sure as to that. I think that there are some instances where the Pennsylvania Railroad tracks extend to collieries to which our tracks also extend. I am not positive of that.

Q. That is a very small factor? A. Yes, sir.

Q. Does the Pennsylvania Railroad also compete with the Jersey Central for anthracite? A. Into the the Schuylkill region?

Q. Anywhere for anthracite tonnage. A. It does not compete in the Schuylkill region, because the Central Railroad's line does not extend into the Schuylkill region. I ought to say in answer to that question, that there is, according to this map before me, some competition as between the Central and the Pennsylvania in the Wyoming district, or in the Wilkes-Barre district. The Pennsylvania Railroad has tracks there.

Q. I think you testified on Tuesday in regard to some transportation service by sea-going tugs and barges from Port Richmond, near Philadelphia. Can you tell me what proportion of this service is used by the Philadelphia and Reading Coal and Iron Company, and what proportion by other shippers. Or, can you not answer that question without special investigation? A. I could only guess at it.

Q. Can you make an approximate answer? A. As to the entire use of that fleet, I would say that about twenty-five to thirty per cent. was employed by outside interests, or other interests, and say seventy-five or eighty per cent. by the Reading Coal and Iron Company. But that would be confined to anthracite.

Q. I call your attention again to this list described as independent collieries and washeries, given on pages 1054 and 1055 (printed page 511) of the record, and ask you whether, if you know, any of those are on lands leased from the Reading Coal Company. A. Yes, sir; I think some of them are.

Q. Can you tell me which? A. I do not actually know.

Q. Where one railroad connects at two different points with another and sends some of its tonnage through from its own rails to points on the second railroad company's rails, has either of the roads a primary right to determine at which junction point the traffic shall be turned over? A. I do not know whether we can differentiate between right and custom.

Q. I would like to hear your views on both? A. The custom is for the road originating the traffic to dictate the route, and it usually does that, with a view to getting the longest haul for the traffic which it originates.

By Mr. Coudert:

Q. Have any of the shippers along your line complained of rates at any time? A. On what?

Q. On anthracite. Or anything else. A. No, sir.

Q. No shippers ever complained? Are you sure about that? A. What do you mean by "complained"? To me, or to some tribunal?

Q. I mean to the administration of your company. A. Shippers, as a rule, are a complaining set.

Q. Among that complaining set do you number the Philadelphia and Reading Coal and Iron Company? A. Yes, sir.

Q. And they complain a good deal of the rates, do they not? A. More than any other shipper we have.

Q. Let me know something about the details of their

complaints? Have you got them in writing? A. No, sir. I have very few of those complaints.

Q. Do they not set their wail down on paper? A. Not always; no. It would take too long.

Q. Tell me the method of complaint of the Coal and Iron Company. A. The method, or the nature?

Q. Both. The nature and the method of the complaint. A. The nature of the complaint is usually with respect to the excessive rates charged for the transportation of anthracite coal.

Q. And they claim they are excessive? A. Yes, sir.

Q. Who makes that complaint? A. Usually the shipping representative, the sales representative of the company.

Q. He makes it with authority of the president of the company, does he? A. I don't know anything about the authority. I am dealing with the facts.

Q. You accept his authority? A. I assume he has authority. He is in charge.

Q. You admit that that shipping agent has the authority to make the complaint? A. Certainly.

Q. You do not question it at all? A. No. The same as any traffic manager of an industrial concern makes a complaint about the excessive rates to his industry. I do not question whether he has a resolution from the Board.

Q. And he could not make those complaints without the concurrence of the president and officers of the coal company could he? A. I think he could.

Q. Do you think he could make them contrary to the wishes of the president? A. Yes, sir; if he could talk, he could.

Q. So you are indifferent as to whether he has due authority to make those complaints or not? A. I am perfectly indifferent; yes, sir.

Q. What do you tell him when he makes the complaints? Do you accede to them? A. I tell him to go and take a rest, sometimes.

Q. So that you are so indifferent to his complaints that you do not even ask if he has authority to make

them? A. That has not anything to do with it at all. The question is whether his complaint is justified.

Q. But you tell him to go and take a rest when he makes complaints? A. Yes, sir. That is when I do not think his complaint has any justification. I tell that to other shippers, too.

Q. In what instances, if any, did you find that the complaint of the Philadelphia and Reading Coal and Iron Company was justified? A. I do not know that I ever found any.

Q. You never have, as matter of fact, found it justified? A. I don't think so.

Q. As far as you know, that complaint was not made in writing? A. No complaints were ever made to me by them in writing.

Q. So that the only complaints that were ever made by the Philadelphia and Reading Coal and Iron Company were complaints made by what authority of the coal company? A. By the commercial representatives of the coal company.

Q. Did you refer his complaints to the president of the railway company? A. No.

Q. Did you refer them to anybody but yourself? A. No, sir.

Q. Did you incontinently turn them down? A. Yes, sir. As I thought there was no justification for them.

Q. Did you discuss them with the president? A. No.

Q. You did all that yourself? A. Yes, sir.

Q. Were those complaints frequent? A. No; they have not been frequent.

Q. Could you tell me about how frequent in the last five years? A. I have not been in charge of the coal rates five years.

Q. As many years as you like? A. I do not think we have had more than two or three in that time, and they were old ones.

Q. From the Coal Company? A. Yes, sir.

Q. So that you did not find the Coal Company such a complaining lot as other shippers? A. No. They were

complaints that have been initiated long before perhaps and revived from time to time, whenever the humor moved them.

Q. But never pressed with great vigor? A. I do not know. They were pretty vigorous in their language sometimes, if that was any indication.

Q. But never so vigorously that you did more than confer or consult about the matter? A. It would not have any effect on me at all. I am accustomed to strong language.

Q. You are so accustomed to strong language that you turned the shipper down without any further ado? A. In those cases; yes, sir.

Q. Meeting language with language? A. No; I couldn't.

Q. How frequent were the complaints of other shippers? A. Oh, the complaints of other shippers ——

Q. Legion? A. Yes, sir; I suppose so.

Q. And do you treat them with the same calm consideration and deliberation as you do those of the Coal Company? A. I must confess that in a great many of the other cases there was some justification for the dissatisfaction.

Q. But no justification in the case of the Coal Company? A. No, sir.

Q. You did not treat it seriously? A. No.

Q. Did I understand you to say that the Pennsylvania and Reading competed for coal in the Schuylkill region? A. Yes, sir.

Q. Did I understand you to say that they do not tap the same collieries, or that they did tap them? A. I said that there might be one or two instances where the collieries were reached in common by both the Pennsylvania and Reading. I am not positive that that is the fact.

Q. But, nevertheless, they compete for that coal? A. They compete for coal out of the Schuylkill region.

Q. Did I not understand you to contend that there could be no competition for coal save where the collieries were tapped by the competing railroads? Is that so or not, in your view? A. That is generally true; yes, sir.

Q. So that, according to your view, the Pennsylvania

and the Reading only compete as to, I think you said, two or three collieries? A. I said there may be two or three instances where the collieries are reached in common by the Pennsylvania and the Reading.

Q. Then the competition between the Pennsylvania and the Reading is insignificant in proportion, according to your idea? A. No, sir; there is no ground for any such inference being drawn from anything I have said. I have said to you very positively and plainly that there is a certain amount of anthracite coal shipped out of the Schuylkill region, and I have shown by a statement here what proportion the Pennsylvania Railroad carries out of the Schuylkill region as compared with the proportion carried out of the Schuylkill region by the Reading? Is that plain?

Q. I ask you how far those two railroads are, in your judgment competitors as to the coal of the Schuylkill region? A. So far as is indicated by the statement I made at the last meeting.

Q. Let us refer to it. Give me the statement of the amount of coal as to which you believe those two railroads to be competitors? A. My testimony at the previous session was that the Pennsylvania Railroad transported out of the Schuylkill region for the year ending June 30th, 1911, 4,150,880 gross tons; for the year ending June 30th, 1912, 3,738,045 gross tons.

Q. And that is the coal that you referred to in your testimony as competitive as between the Pennsylvania and the Reading? A. Yes, sir.

Q. State whether a very substantial amount in fact of freight other than anthracite transported from Pottsville to New York and *vice versa*, as shown in the tables furnished by you on page 1058 (printed page 513), does not move in less than carload lots? A. It does not; no. The major portion of it would be carload lots. It is to-day. It is largely iron and steel manufacture from Pottsville.

Q. Could you at your convenience add to your statement the fact in regard to what proportion of that traffic is in carload lots? A. That would involve a great deal of labor. If you think it is essential.

Q. Can you tell me from your own knowledge, after as much thought as you care to give the matter, what is the proportion that is carried in carload lots, and what proportion in less than carload lots? A. I would say twenty-five per cent. less than carload lots would be a fair proportion of the traffic.

Q. Is not manufactured steel of high specific value according to its weight? A. We do not make the rates according to the value.

Q. How do you rate steel? A. Manufactured steel is rated under the classification as fifth class.

Q. A class by itself? A. Not a class by itself. There are a good many other articles that are in the fifth class.

Q. The non-carload lot freight is much more costly, is it not, to transport than the carload lot? A. Not any more costly to transport. It is more costly to handle. It is handled by our own employees at the terminals over the platforms, and again at destination is handled over the platform. But, as illustrating the difference between the cost of handling the less than carload and the carload, I would like to call your attention to the difference in the freight rate. For instance, you take a case of boots and shoes, or a case of hats, which is typical of the less than carload traffic, and it is first-class, under the classification, and the rate on that would be from New York to Pottsville, $7 a ton. Take a carload of sugar from New York to Pottsville, it is rated fifth class, and the rate would be $2.40 a ton. In the former case is involved the handling of the stuff over the platform, and in the second case there is no terminal handling involved.

Q. And allowance is made for that in fixing the freight? A. Yes, sir. There is that difference between the carload unit and the less than carload unit.

Re-direct examination.

By Mr. Reynolds:

Q. Making a slight incursion into the realms of imagination for a moment, can you imagine that any one of the 365 collieries in the coal region produce each ton

of coal at precisely the same price? A. No, sir; I could not for a moment imagine that the cost of production at every colliery would be per ton of coal identical.

Q. Coming down to the realities, has the freight rate ever been made on the basis of percentage of selling price of coal at tide since you have been in general charge of the rate making? A. No, sir; not with the Philadelphia and Reading Railroad.

Q. Who makes and absolutely controls the local rates on your railroad to the junction point with other railroads? A. We do ourselves, the proper officer of the company.

Q. Would it follow, therefore, that any freight rate availed of by a shipper on one of those railroads that Mr. Coudert has built this morning cutting the rate in two, would still have to surmount the local rate which you might make against him? A. Yes, sir.

Q. You said that you had had complaints about freight rates of all kinds. Have you had any complaints against your anthracite freight rates except a case brought by William Randolph Hearst in the public interest, and a case brought here by Mr. Bellis in his interest as a lawyer? A. No, sir.

Q. You have not had any real shippers of anthracite coal to take you before the various commissions on your anthracite rates? A. No, sir.

Q. In twenty-seven years? A. No, sir.

Q. During those twenty-seven years has the Interstate Commerce Commission ever reduced any of your anthracite rates? A. It has not; no, sir.

Q. Not even fifty per cent.? A. No, sir.

Q. Can a railroad company whose lines make a junction with your own make the joint rate without your concurrence? A. It cannot; no, sir.

Q. Your comparison of the rates on anthracite and other traffic was on exactly the same haul, was it not? A. Yes, sir.

Q. That is both kinds of traffic were moving between exactly the same two termini, were they not? A. Yes,

sir. With this distinction which I have already called attention to, that in the case of the general merchandise we are moving traffic in both directions, whereas in the case of anthracite, we are moving it only in one direction.

Q. Whether one road can force its view of a good or bad bargain on another road with which it is negotiating in respect to divisions of a through rate is dependent upon the circumstances of the strategical position of the two roads at the particular moment when that negotiation is taken up, is it not? A. Largely; yes, sir.

Q. It is like any other contract? A. Like any commercial proposition.

Q. The Interstate Commerce Commission has never sought to make your divisions, has it? A. Not yet; no, sir.

Q. And, therefore, whether in a given instance a carrier can dictate about these divisions of routing depends somewhat on whether that carrier has you on the hip or not temporarily, does it not? A. Yes, sir. It depends on how badly we want to reach a market which the other carrier may be able to supply, or how much that other carrier may desire the traffic which we have got to give it.

Q. In your dealings with the B. & O. and the Pennsylvania Railroad on anthracite coal going south, is it or not a fact that in that particular case those railroads are able to dictate to you the routing? A. Yes, sir; to a certain extent.

Q. Have you anything other than a Hobson's choice in respect to that routing when it is matched up against the divisions you would get by the other routing? A. No.

THEODORE VOORHEES, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What position with the Philadelphia and Reading Railway Company do you hold? A. I am vice-president of the Railway Company.

Q. Have you any connection with the Philadelphia and Reading Coal and Iron Company? A. No, sir.

Q. Or with the Central Railroad Company of New Jersey? A. No, sir.

Q. Or with the Lehigh and Wilkes-Barre Coal Company? A. No, sir.

Q. Or with the Lehigh Coal and Navigation Company? A. No, sir.

Q. Or with the Lehigh and New England Railroad Company? A. No, sir.

Q. Or with the Lehigh and Hudson River Railroad? A. No, sir.

Q. What, in a general way is the topographical character of the section of the coal regions served by the Philadelphia and Reading Railway? A. The Schuylkill region?

Q. Yes. A. It consists of two sub-divisions which we commonly speak of as north of the mountain and south of the mountain. The portion of the Schuylkill region that we serve north of the mountain, known as the Mahanoy Valley, extends from the vicinity of Tamaqua through Mahanoy City, via Shenandoah and Mr. Carmel and Shamokin to Trevorton, a distance of approximately about sixty miles. It is a very irregular valley, with high ridges or mountains on either side, very steep indeed, and the veins of coal are so steep that they are almost V-shape. I confess I have never been down into one of the mines, but they tell me it is some thousand or fifteen hundred feet below the bottom of the valley, and the distance across to the outcrop is probably only four miles. The portion south of the mountain extends in a general direction from Lansford or Tamaqua through Pottsville, Tremont into the Lykens Valley, and there is coal indicated, but not in operation, further down toward Rockville. The valley is equally broken up in a series of narrow valleys and steep hills on either side, very irregular in outline.

Q. Where are the collieries usually located in those valleys? A. They are located especially with reference to convenience in mining, I assume. It is many years since I was a mining engineer, but, the shafts or slopes, as the case may be, are usually located with a view of getting to the bottom of the vein so the coal will come gradually through the various chambers and collieries to the foot of the slope, and so be taken out.

Q. Generally speaking, how are these colliery workings served by the railroads in this region? A. In most cases, the tracks under the breakers are the property of the Railway Company, and the attendant points or distributing points also belong to the Railway Company, in many cases the Railway Company owning a title or right of way under the breaker, and in some cases even owning that title in fee. As a rule, the railway companies do not own or in fact, as far as I know, none of them own any of the coal beneath the surface.

Q. Where does the railway operation necessarily put the cars to serve the collieries? A. In all the collieries that we serve, the Philadelphia and Reading Railway Company, we have to place the cars on sidings above the colliery; then they are dropped down by gravity by men who are employed for the purpose, under the chutes, and distributed, the particular cars under the particular bins, so that the various kinds of coal will be loaded in the proper car with reference to the orders and destination that the shipper wishes the coal to be sent.

Q. Does that general relation of railway to the colliery obtain uniformly and generally throughout your region both with the collieries of the Philadelphia and Reading Coal and Iron Company and outside collieries? A. So far as I know it is the usual practice all through the anthracite region.

Q. Is that territory a territory in which it is expensive or inexpensive to construct railroads? A. The construction of roads in the Schuylkill region is necessarily

quite expensive, on account of the physical difficulties in getting out of the valley, so to speak. All of the coal from north of the mountain we have to take up by way of the Mahanoy Plane and over Broad Mountain and drop it down again into the St. Clair yard. The coal that is taken out of that valley by the Lehigh Valley Railroad Company or the Pennsylvania Railroad Company goes over lines of very heavy gradient, which are very circuitous.

Q. Would it be an expensive or inexpensive proposition to build a new railroad in to these various smaller valleys in the Schuylkill region? A. It would be a very expensive operation. In some places, for example, in the vicinity of Ellen Gowen Colliery in Mahanoy City, the valley is so narrow and the collieries so close together that it would be almost an impossibility for another railroad to get in there.

Q. In general, are those valleys narrow or broad? A. Quite narrow.

Q. Do the railroads already occupying those valleys occupy the best available routes or not? A. I can only speak for the road I am familiar with. We think we are in the best available positions in the Mahanoy Valley.

Q. Take the other smaller valleys in the region, would it be an easy or difficult matter for any invading railroad to come into those same collieries? A. It would be an exceedingly difficult matter. The Lehigh Valley is shown on this map before me to reach Shenandoah, which in this district has to go over very rough country and ravines, about eighteen hundred feet above tide, and, I know from my personal experience as I was General Manager of the road at one time, the grades are very heavy, and the cost of operation is excessive.

Q. For such an invading railway to duplicate your system into that territory and pry loose all the independent and Philadelphia and Reading Coal and Iron Company collieries from your system would that involve any

greater expenditure of money, in your judgment, than that involved in placing you there as you now are? A. Several times as much I should say. A new railroad coming in there would necessarily be obliged to avoid any grade crossings of existing railways, and under present conditions in Pennsylvania, avoid crossings of highways, and, the cost of construction would be very great on that account alone.

Q. You think that the cost of construction would be, as you say, several times what your cost was? A. I should think it would be several times what it cost the original road that goes in there now, and, multiply to that extent the fixed charges for the duplication of the system.

Q. Going back to your remark about the resultant gradient on the Lehigh Valley Railroad, and your remark that that involved higher operating costs, would it or not be a fact that such an invading railroad, taking certain choice of routes would have very generally much higher operating ratios than the Philadelphia and Reading? A. I think so; yes, sir.

Q. With your sidings into these various independent and Philadelphia and Reading Coal and Iron Company collieries, would it be a possibility for such an invading railroad to get into these collieries? A. I should say not. I do not know of any law that obliges the Philadelphia and Reading Railway Company to place its tracks and terminals at the service of another road. In fact, my impression is that that is expressly omitted in the Interstate Commerce Act, ruled against.

Q. How long has the Pennsylvania Railroad had its Schuylkill Valley branch into that valley? A. I have been with the Philadelphia and Reading Railway twenty-one years, and it was before that, but I believe not very long before that. I do not know, exactly.

Q. Has the Pennsylvania Railroad built any sidings into the collieries on the Philadelphia and Reading Railway system since you have been in the service of the Philadelphia and Reading? A. Not that I know of.

Q. Other than the independents or the Philadelphia and Reading Coal and Iron Company collieries? A. There is one case where an independent operator desired to get the service of the Pennsylvania Railroad and they bought the tracks and cut it loose entirely from the Reading and went over to the Pennsylvania Railroad. That is the case of the Buck Ridge, No. 2, near Shamokin. That is the only case I now recall.

Q. How long has the Lehigh Valley been in your region? A. Since before my time. I do not know how long.

Q. Have they ever built any sidings into the collieries, either independent or Philadelphia and Reading Coal and Iron Company, tributary to the Philadelphia and Reading Railroad system? A. There is a colliery near Shenandoah, known as the Kehley Run or Thomas Coal Company, that is served by the Reading, and the Lehigh Valley, as a track connection with our tracks, and props and mine supplies, and freight for the colliery are brought there by the Lehigh Valley.

Q. With the consent of the Philadelphia and Reading? A. Some agreement. I do not know its nature.

Cross examination.

By MR. COUDERT:

Q. Is there anything to prevent the owners of the collieries from allowing another railroad to run sidings into the collieries? A. It would not be physically possible. In most cases.

Q. In many cases it would be physically possible, would it not? A. No, sir; I think not.

Q. In what proportion of the cases? A. I do not know of any. Are you familiar with the construction of a colliery?

Q. Not at all. That is the reason I am asking you, because I am not and you are. There are a considerable number of collieries that are served by more than one

road, are there not? A. No, sir; I think not. I think it is very rare.

Q. There are some, as matter of fact? A. Not where two different railroads run their own cars and engines under the colliery. I do not know of such case.

Q. Assuming that it be physically possible for two sidings to run into a colliery if the owner of the colliery desires that to be done, there is no difficulty, is there? A. If the owner of the colliery owned all the tracks under and in connection with the colliery, and two railroads had connections with those tracks, then it would be feasible, yes, sir.

Q. And that is sometimes the case, is it not? A. No, sir.

Q. Do not the collieries themselves sometimes own ——. A. No; I think not. I do not know of a case.

Q. Are you quite sure about that? A. I do not know of a case.

Q. Suppose that the owner of the colliery, that is, the owner of the land, desires a railroad having a line adjacent to him to run a spur, is there any other obstacle than possible physical difficulty? A. If he makes an arrangement with the railroad; no.

Q. And the railroad runs it in? A. Yes.

Q. So that, the only obstacle you say is that you say that in the Schuylkill district in a large portion of cases there are physical difficulties? A. Very difficult physical difficulties.

Q. Owing to the narrowness of the valleys? A. Yes, sir.

Q. Therefore, a road running into the coal region, a new and invading road, as Mr. Reynolds calls it, would not seriously menace the Reading Railroad? A. I cannot answer that.

Q. If your testimony be correct, that it be impossible for these invading roads to reach your coal, then an invading road would not be a dangerous competitor, am I not right? A. I can only give you an example. The Le-

high Valley have a branch running into this region, known as the Blackwood branch that penetrates the very center of the southern field. I doubt whether they have ever succeeded in getting very much coal or doing much business over it.

Q. Then a new railroad by trying to penetrate into these fields, with these physical difficulties that you have mentioned as to reaching collieries, would scarcely be a danger? A. It would not keep me awake at nights, sir.

Q. Then how do you explain the fact that your company, or the Reading Company, paid in the neighborhood of two millions of dollars to prevent an invading railroad, as Mr. Reynolds calls them, from coming into that territory, and committed an illegal conspiracy? A. I am not aware that the Reading Railway Company ever did anything of the sort.

Q. The Reading Company? A. I do not know anything about it.

Q. You are not familiar with the decision of the Supreme Court about that? A. That is outside of my jurisdiction.

Q. I am perfectly familiar with the fact that your railroad paid in the neighborhood of two millions of dollars and entered into an illegal, and probably criminal conspiracy, for the purpose of excluding an invading railroad. How do you explain that fact, in view of your assertion that the invader could not take the coal from that district? A. The Philadelphia and Reading Railway Company?

Q. The Reading system.

MR. REYNOLDS:—The railroad was not anywhere near the Reading Railway.

By MR. COUDERT:

Q. Then in view of the fact that in your opinion an invader of these coal fields could not reach your collieries, and, in view of the fact that such an invader would not be a menace to your business, do you think that your railroad, or any of its affiliated companies, would be justi-

fied in paying a large sum of money to keep out an invading railroad from any portion of the coal field? A. When you say "any portion of the coal field" do you mean the portion from which we derive our traffic?

Q. Any portion whatever? A. We are not interested in the traffic from the Wyoming Valley.

Q. So you cannot conceive any advantage accruing to your railroad from buying out an invader attempting to locate anywhere in the coal fields? A. Not to our railway, no, sir.

Q. Therefore, you cannot explain why a conspiracy was entered into with that object, and great sums of money paid? A. I have no knowledge of any such thing.

Q. Then such a railroad, if it did not touch the same collieries, and, according to your testimony it could not, would not have been dangerous as a competitor? A. Not to the Philadelphia and Reading Railway Company; no, sir.

Q. It would not? A. No, sir; I think not.

Q. It would not have been worth while to engage in any conspiracy to avoid any law, criminal or civil, or to pay millions of dollars to prevent it coming in? A. Not to the Reading Railway.

Q. That is your judgment? A. That is my judgment.

Q. Yet, you know it was done. A. No, sir; I do not.

Q. You never heard of the case of the United States *vs.* The Reading Company? A. I know nothing about it.

Q. You never read about it in the newspapers? A. I have read about it in the newspapers, but I know nothing about it.

Q. You are so unfamiliar with the coal situation that you know nothing about it? A. I do not disturb myself about it.

AGNEW THOMPSON DICE, having been duly sworn:—

MR. REYNOLDS:—Before examining the witness, I put in evidence his testimony from the old record, volume 4, page 625, and following, which he gave on April 28th, 1909, as follows:—

Testimony of Agnew Thompson Dice, a witness called by the defendants in the old suit. (Volume IV, page 625 and following.) April 28th, 1909.

AGNEW THOMPSON DICE, called on behalf of the Philadelphia and Reading Railway Company, having been duly sworn, was examined as follows:—

By JUDGE CAMPBELL:

Q. You are now the general superintendent of the Philadelphia and Reading Railway Company? A. I am.

Q. And also of various affiliated companies which, while maintaining a separate and independent organization from the Philadelphia and Reading Railway Company, are affiliated on account of a major interest of the Reading Company in their share capital, and form part of the so-called Reading System? A. I am general superintendent of the system of the Philadelphia and Reading Railway and affiliated lines.

Q. How long have you been general superintendent? A. Since the 1st of May, 1903. On the 1st of February, 1897, I was appointed superintendent of the Shamokin Division of the Philadelphia and Reading Railway and on May 1st, 1903, I was appointed general superintendent, which position I now hold.

Q. You have stated that you were for some years local superintendent of the so-called Shamokin Division of the Philadelphia and Reading Railway Company. I would like you to describe orally what is included in the so-called Shamokin Division, giving it a general description so as to differentiate it from other parts of the road in the coal region. A. By reference to the map?

Q. By giving some oral definition of it, but keeping your eye on the map so as to guide you. A. The limits of the Shamokin Division are Tamaqua on the south, where it joins with the Reading Division of the Philadelphia and Reading Railway and runs north and west through the Mahanoy Valley, through the Locust Summit region to Shamokin, thence north to Williamsport and Newberry Junction, where it connects with the New York Central

Railroad. Then we have, from a point seven miles north of Tamaqua, an alternate line known as the Catawissa Line, which diverges there from the Shamokin Division, running north and east, or more nearly north, through the Catawissa Valley and again joining the Shamokin Division at West Milton. The two lines are each about sixty-five miles in length. Over the Catawissa line we handle our through bituminous coal and through trade and merchandise traffic going to and coming from north and west.

Q. Tamaqua is on the leased line called the Little Schuylkill Railroad Coal and Navigation Company? A. I am not certain of the full extent of the original title. It is called the Little Schuylkill Railroad now.

Q. It extends down through Tamaqua to Port Clinton, where it joins the main line from Pottsville? A. Yes, sir.

Q. There are no coal operations whatsoever on the line of the Catawissa Railroad proper? A. No.

Q. North of the Catawissa Mountain there are no coal operations tributary to the Philadelphia and Reading Railway System? A. No.

Q. I want to call your attention, before you leave that subject, to a little independent road to Coleraine Colliery; what is the name of that? A. The Beaver Meadow Tresckow and Northern, I believe.

Q. That belongs to the owner of the Coleraine colliery? A. Yes, sir.

Q. Some estate is the owner of that property; do you recall the name of it? A. Van Wickel.

Q. About how many miles is the Coleraine Colliery from this connection with your branch up in there? A. About a third of a mile.

Q. That is the only colliery in that region that ships its coal over the lines of the Philadelphia and Reading Railway System? A. Yes, the only one.

Q. Let me call your attention to the fact that, from some collieries in the so-called Audenried region or Lehigh region, the Central Railroad Company, with its own power under trackage right and the payment of so-called

rental, transports, with its own power, the coal produced from their collieries there, from a connection with their tracks of a branch of the Catawissa system, down to Tamanend, where they continue on over their own system. A. That is correct.

Q. Those operations are the sole operations producing anthracite coal connected with the tracks of your Catawissa system? A. They are.

Q. So far as the anthracite coal regions are concerned, I take it from what you have said that this Shamokin Division includes everything north of the summit of Broad Mountain? A. It does.

Q. Substantially everything north of Broad Mountain? A. Yes.

Q. The other coal regions south of Broad Mountain, in the Minersville region, Lykens Valley and so forth, they are included in the other division? A. They are all in the Reading Division.

Q. They are all included in what is called the Reading Division? A. Yes.

Q. You are equally familiar, are you not, with all the geographical features of the southern part of this coal field, as well as of the northern, from your experience since you became general superintendent? A. Yes, I am.

Q. I wish you would begin at such a place as you may see fit and describe, in a general way and in some detail, the mode and method of carrying empty cars to the breakers, carrying loaded cars from the breakers to the various gathering points, describing them, throughout the whole system, following your map so you can keep continuity of thought about it. A. The map shows in a comprehensive way the entire coal region of the Philadelphia and Reading Railway, and it is corrected up to date, showing both the active and abandoned collieries. At St. Clair the coal is weighed and forwarded; that is all coal from the Shamokin Division. The empty cars are assembled there and distributed throughout the Shamokin region. From St. Clair to Mahanoy Plane, a distance of seven miles, we have a grade of one hundred and

eighty-five feet to the mile. Our largest engines haul fourteen to sixteen empty cars up that grade. The cars are there lowered over Mahanoy Plane and again picked up with engines and distributed throughout the coal region.

Q. I wish you would describe that plane, while you are passing it, the method of its operation. A. The plane is a double track inclined plane about fourteen hundred feet long and having a vertical lift of three hundred and sixty-three feet. The empty cars are lowered on the plane and the loaded cars are hoisted. The maximum load loaded on the plane is one hundered and ten tons.

Q. How much does that represent in cars? A. That represents in cars not to exceed three of our sixty thousand pounds capacity cars; two of our fifty-ton cars. There are, passing over that plane and over that one hundred and eighty-five foot grade between St. Clair and Mahanoy Plane, each working day, about one thousand empty cars and one thousand loaded cars. We have a distributing and assembling yard at the foot of the plane, from which the empty cars are distributed to the various collieries on the Shamokin Division. We have from Mahanoy Plane to Gordon a descending grade of fifty-two and eight-tenths feet to the mile. Empty cars are taken down there in trains of from fifty to seventy-five cars, as it may suit the trade, and are set off at Gordon; that is a distance of eight miles. From Gordon to Locust Summit, seven miles, we have an ascending grade of one hundred and thirty-two feet to the mile. An engine will take about fifteen empty cars to Locust Summit. From Locust Summit into Shamokin we have a descending grade varying somewhat, but generally seventy-five feet to the mile; that is on a distance of twelve miles. At Shamokin we again have a small distributing and assembling yard, from which the collieries in the immediate vicinity of Shamokin are served. Leaving Shamokin we go to North Franklin Colliery, which is the most northerly and westerly colliery of the Philadelphia and Reading Railway and is about forty miles from the St.

Clair yard. There were at North Franklin originally two collieries which were abandoned about the year 1898, and one colliery opened in place of the two. In handling the product from North Franklin Colliery, we have Herndon Branch Junction, which is two miles beyond Shamokin and which is six and six-tenths miles from Treverton, where North Franklin Colliery is located. In operation, an engine will take from sixteen to seventeen cars from Shamokin to Kulp's Summit. They there set off those cars, go back to Shamokin for another train of sixteen or seventeen cars, taking them up to Kulp's Summit, and the same engine that delivers the cars to this North Franklin Colliery, hauls the loads from North Franklin Colliery to Kulp's Summit. It will haul up there about fourteen or fifteen loaded cars, and will take the same number of cars into Shamokin yard. North Franklin Colliery produces about sixty loaded cars a day, so that it takes from four to five trips of an engine between Shamokin and North Franklin Colliery to handle the output, or requires about sixteen or eighteen hours each day for one engine. Of course, there may be a different crew; that is expressed simply as engine hours. From Shamokin an engine will haul to Locust Summit, which is a seventy-five foot ascending grade, seven or eight loaded cars. The cars are dropped down from Locust Summit to Gordon in trains of about thirty-five cars each. From Gordon they are hauled to Mahanoy Plane in trains of about forty-five cars each, with three engines, three of our largest engines on the train. At Mahanoy Plane they are put on the plane and hoisted, not to exceed three cars at a time, and are hauled down the Frackville grade to St. Clair in trains not to exceed thirty-five cars to a train. We have to limit the length of our train on that down grade on account of the danger in operating a very steep grade.

Q. I wish you would go back and mention all of the several collieries that are tributary to that Shamokin yard, so-called, and the quantity of coal from the whole of that region that is handled in the way you described with re-

spect to the output of the Franklin colliery. A. The Bear Valley, Burnside and Henry Clay collieries are supplied with cars and are handled, from the transportation standpoint, by the railroad forces at Shamokin. Bear Valley and Burnside collieries particularly are on very heavy grades.

Q. Are those on the main line or on coal branches? A. They are on coal branches by themselves.

Q. I wish you would mention the coal branches leading to these various collieries as you are passing them. A. Henry Clay has an output of about 1200 tons, about sixty cars per day; Bear Valley about fifty cars per day; and Burnside about seventy cars per day. The Bear Valley, Burnside and Henry Clay collieries require three engines about ten hours each to serve them, each working day.

Q. For each colliery or the three? A. For each colliery.

Q. That means nine engines for the three? A. Oh, no; three engines about ten hours each.

Q. To serve these three collieries to and from Shamokin yard? A. To serve these three collieries to and from Shamokin yard.

Q. All this product, of course, distributed from the Shamokin yard, takes the same course as you described with respect to handling the output from the Franklin Colliery? A. Precisely. Corbin, Excelsior, Enterprise, Locust Gap, or rather Locust Spring, Alaska, Reliance and Natalie collieries are handled from our yard at Locust Summit.

Q. In a similar way? A. In a precisely similar way.

Q. That is to say, the coal is collected from the collieries to the yard and assembled in the trains there? A. And then hauled along to the St. Clair yards over the same route I described for the Shamokin coal.

Q. How is it about the coal branches to those several collieries you mentioned? A. The branches at Excelsior and Corbin collieries are on very heavy grades; Enterprise Branch is practically a level branch; Alaska Colliery

is along the main line, on, however, a seventy-five foot grade on the main line. The Reliance Colliery is on a branch with a light grade. Natalie Colliery is on a branch about four miles long, with a grade of about sixty feet to the mile. with a switchback on it.

Q. Describe a switchback. A. The Natalie Colliery is just on the top of the mountain and, in order to reach it from Alaska, you cannot get over there and get up by a continuous line, and we run along the side of the mountain up to a certain point, then stop and branch off this line ——

By JUDGE MOOT:

Q. You zigzag up the mountain? A. Yes.

By JUDGE CAMPBELL:

Q. Now go on to the next region. A. Potts Colliery, the next one east from Locust Summit, is served from Mahanoy Plane, over another branch, which we call the Ashland Upper Route. That is a single track line with a grade running up to one hundred and eighty-five feet to the mile. We can handle with the colliery engine about twelve empty cars up that grade and haul about an equal number of loaded between the colliery and the foot of Mahanoy Plane. Big Mine Run, or rather Bass Colliery is another operation on the Ashland Upper Route which is served against that heavy grade. The production is also handled from Mahanoy Plane. All of the collieries in the Shenandoah region, Keely Run, Knickerbocker, Indian Ridge, Blank Ridge, Shenandoah City, Cambridge, Maple Hill, Suffolk, St. Nicholas, Kohinoor, West Shenandoah, Hammond, are handled, and Bear Ridge is also handled, from Mahanoy Plane.

Q. I wish you would describe that Shenandoah Branch. A. The Shenandoah Branch is a single track branch about seven miles long, on which are handled about two hundred and fifty cars of coal a day. From Mahanoy Plane to Preston Junction, two miles we have a descending grade going to the Shenandoah Branch of about one foot to the mile. From Preston Junction is an ascending grade to the various collieries, limiting the number of empty

cars that an engine can haul from Mahanoy Plane to any of the collieries to about fifteen and, with the return of the loaded, the grade from Preston Junction to Mahanoy Plane limits the loads handled per engine to about twelve or fourteen loads. We have working on that branch about five engines, handling the product of these collieries; we have five engines, working about twelve hours per day each. There are also collieries at Stoddard, Draper, Gilberton, Boston Run, Tunnel Ridge and North Mahanoy and Mahanoy City collieries. Of those collieries Draper and Gilberton are on branches with very heavy grades. The other collieries named in that group are on comparatively light grades. In giving the collieries on the Shenandoah Branch I inadvertently included some of the collieries on the Ellengowen, but did not include them in the time necessary to serve them with engines. The Ellengowen Branch is a branch two miles in length, leading off of the main track of the Shamokin Division at St. Nicholas. On the Ellengowen Branch are Knickerbocker, Ellengowen, Maple Hill, Suffolk and St. Nicholas collieries, producing about two hunderd cars of coal a day. The grade going up the branch from St. Nicholas is an ascending grade of about sixty feet to the mile. An engine will haul fourteen or fifteen empty cars up the branch and will return with about thirty loaded cars. The Ellengowen Branch requires four crews about ten hours per day to handle the production. All this Shamokin Division coal as I have stated before, is handled by Mahanoy Plane, except in case of any interruption to the operation of Mahanoy Plane, which occurs occasionally, when part of the coal is handled south via Tamaqua and the remainder is handled over what is termed the Bear Run Junction route, which is a connection between the Shamokin Division and the Reading Division, running up the mountain side on a grade of one hundred and thirty-two feet to the mile. We have altogether on the Shamokin Division forty-seven engines constantly engaged in the work of distributing empty cars and gathering anthracite coal and putting it at the foot of Mahanoy Plane, and forty-

seven engines are not able to do all of the work with a single crew, so that we have forty-seven engines and fifty-seven crews constantly in that work, taking care of the Shamokin Division coal between the collieries and the foot of Mahanoy Plane.

Q. Describe a little more fully the movement over Mahanoy Plane and the Plane itself. A. Mahanoy Plane is a double-track inclined plane. There is an engine at the head of the Mahanoy Plane of twenty-five hundred horse-power, with two forty-five by sixty-inch cylinders, and a nest of five Sterling boilers furnishing steam for the engine. There are two twenty-foot drums or shieves on that engine, around which wire cable is wound and rewound, and to either end of the wire cable is attached a safety truck. The safety truck in going down the plane at the foot of the plane drops into a pit provided for that purpose, so that empty cars can run out over the safety truck, and in putting the loaded cars on the plane, the loaded cars run in over the safety truck and then, when the engine is started, the safety truck rises up out of this hole and comes up against the cars and pulls them up the plane.

Q. Before we get to the service at the scales, I would thank you to take up the various fields in the lower region of your Reading Division, anthracite coal, that is, going through the same method of description, locating the yards, the method of assembling, and so forth. A. At Cressona, which is on the Mine Hill and Schuylkill Haven Railroad and is about six miles south of St. Clair yard, we have another yard and a weigh scale where the coal that is mined south of Broad Mountain is handled. The coal from Kaska William, Silver Creek and Eagle Hill collieries is handled through the St. Clair yards. At Cressona we handle all of the coal mined south of Broad Mountain, except those three collieries. Brookside colliery is the most westwardly colliery in the Reading Division and south of Broad Mountain about twenty-five miles from Cressona scale. One engine will handle thirty-eight cars from Cressona scale to Tremont, about fifteen miles. From Tremont to Keffers, about five miles, one engine

will handle eighteen cars. From Keffers to Brookside, one engine will handle abouty thirty empty cars and return with about thirty loaded. Brookside produces about fifty-five loaded cars per day, requiring the services of one engine and crew for about fourteen hours. Lincoln colliery, on the Lorberry branch, which is a branch with a switchback on it, a grade of about sixty feet to the mile, is served with one engine and an engine will haul over that branch eighteen empty cars. On account of the grades and the switchback, it cannot haul more than eighteen loads out from the colliery. That colliery, with a capacity of sixty-five cars per day, requires the use of one engine and crew for about seven hours each day. We have Good Spring Colliery, Donaldson, Phœnix Park No. 3, Otto, Buck Run, Glendower, Butcher Creek Washery, Ellsworth, Oak Hill, Wadesville and Pine Knot collieries, all of which are handled from Cressona. The collieries south of the mountain require twenty-five engines and twenty-five crews, working about twelve hours each to handle their product. That includes all collieries on the Reading Division.

Q. Now you have described the *modus operandi* of collecting the coal from the collieries to the scales and the carrying of the empty cars from the scales to the collieries. Be good enough now to describe, as briefly as you may, to be accurate, the *modus operandi* of handling and assorting the coal at the scales, assembling it into trains for consignment and in general the operation of the yards at the scales. A. At St. Clair we have a yard that will accommodate about two thousand cars, which is about one day's business. We have under consideration at this time the question of spending a million dollars there for improvements and additions to the yard, and at the same time spending $100,000 on the Mahanoy Plane for improvements. As I explained, all of the Shamokin Division coal, the coal from Kaska William, Silver Creek and Eagle Hill, is assembled at St. Clair, weighed at that point and the shipping directions are given there. The coal is classified on the various tracks south of the scale as to

destination. We have about twenty tracks now on which we can classify, and our proposed plan is to have thirty-two tracks. On account of the great variety of sizes and kinds of coal, the question of classification is a very tedious one. At certain times the market will take certain sizes of coal and other sizes it will not take. So we constantly have at our scales what is known to the men as surplus coal. It is coal which, when it reaches the scale, there are no orders for and it is there held in surplus until an order is received either to forward the coal on a direct consignment, or to forward it to one of our various storage yards for dumping and putting in storage. When a consignment is given, it of course requires additional switching in order to get the coal out of the classification yard where it has been switched, and the classification yard is on a very heavy grade, so that the handling of that surplus coal is a matter of considerable expense. The coal that goes on direct consignment is classified and is picked up at St. Clair yard by an engine and hauled to Palo Alto, a distance of three miles, and there taken by road train to destination. The destination may be Harrisburg, Port Richmond, Port Reading, or to local destinations. The trains consist of about sixty-five cars each, or three thousand tons per train and, of course, in the distribution of the anthracite coal there is a tremendous amount of stopping and setting off of loaded cars and returning cars, stopping and picking up of empty cars and taking them to the coal regions.

Q. Before you proceed further in regard to the ultimate destination of this coal, I would like you to state the comparative cost of gathering the coal from the collieries, supplying the empties, carrying it to the scales, handling it at the scales, with reference to the cost of the haulage of the loaded train from the scales to the destination. A. Each colliery, of course, produces a great number of sizes of coal. The coal coming out of the mine and into the breaker is broken up, separated into the various sizes being prepared for market. There are many sizes, and the different sizes largely go to different places, so that we have at all our col-

lieries a number of both empty and loaded car tracks, on which the cars are switched so that they may be available for loading as the necessity of the breaker requires; they get their Chestnut coal or their Pea coal chutes, as they term them, in the breaker full, and they must have a car to load that particular coal on. It may be a Reading car or it may be a car for loading to Chicago, or some other point, so that we must constantly have at the collieries a number of different cars, coal cars and box cars, and be prepared to furnish them as they are needed at the collieries. After the cars are run into the breaker and loaded, they are dropped below the breaker and are there switched into trains to be hauled to the scale. The North Franklin Colliery, for example, is forty miles from St. Clair scale. Brookside Colliery is twenty-five miles from Cressona scale, and with this tremendous number of small sidings and branches, and coal operations, the question of supplying the collieries with empty cars and distributing them and assembling the loaded cars is, of course, a complicated and expensive arrangement. It costs us pretty nearly twice as much to gather our coal at the scales, ready to forward to market, as it does to haul it from the scales to market.

Q. Before leaving this feature, I wish you would describe the character of the cars that are required by this anthracite coal service, in respect of capacity, as compared with those that are required in the bituminous service, for instance. A. The important difference between anthracite and bituminous coal is that bituminous coal is usually sold run of mine, that is, all the output is of the same grade and can be loaded, weighed and consigned without furnishing a different kind of car. With the antracite coal, with the different sizes and the fact that one day there is no market for coal and another day there may be, we have to have on hand all the time a variety of cars. One colliery, for example, in making a call for cars at night will call for, say ten P. & R. cars, five west of Buffalo box cars, three cars for loading to the South and as many more for loading to New England points.

The Railway Company to meet that must always have on hand foreign cars, on which they, of course, pay a *per diem*, and often, after cars are held for a few days, we find that orders have not materialized and the cars are sent home empty. That is the exception, of course. The breakers, many of them are old and were built when there was no thought of a car of one hundred thousand pounds capacity, so that we find ourselves to-day with a large proportion of our equipment being the old, low-side car. The coal companies can not, in a wholesale manner, rebuild their breakers and we have to provide cars that can be loaded at the breakers. We have now eleven thousand five hundred and ninety-three twenty-five-ton cars, that is, fifty thousand pound capacity cars, which were built about sixteen to eighteen years ago. We figured a little while ago on not spending much money on the repairs of those cars, but, as they got to a certain stage, to destroy them and replace them with other cars. The problem was what other cars we could use. We could not use one hundred thousand capacity cars extensively at all, because only about twenty-five per cent. of the breakers can load the one hundred thousand ton cars. Again, even when they can load them, the farmer and the grocer and the man living out in the country wants twenty or twenty-five or thirty tons of coal and does not want fifty, so we cannot load the one hundred thousand pound cars to the small consumer of coal. In replacing those eleven thousand five hundred and ninety-three cars with an equivalent carrying capacity, we got the following: It would require ninety-six hundred and sixty-one, thirty-ton cars, at $900 each, to provide an equivalent carrying capacity, and they would cost $8,694,900. To replace them with the forty-ton car would require seventy-two hundred and forty-six forty-ton cars, which would cost $950 each, or a total of $6,883,700. It would require fifty-seven hundred and ninety-seven fifty-ton cars, at $1055 each, a total of $6,086,050. That shows that to replace our present old equipment of twenty-five ton cars with fifty-ton cars would cost us $2,608,850 less than to

replace them with thirty-ton cars. We would not think of building a thirty-ton car if it was not for the anthracite coal business. The bituminous man and the blast furnace man with the iron ore will not take a thirty-ton car. They want a one hundred thousand pound car, because it will carry a larger load and because it is what we call self-cleaning, or self-unloading. You open the doors in the bottom of the car and the load runs out. We therefore have fifty-ton cars and the thirty-ton cars and will probably have to perpetuate them on account of the necessities of the anthracite trade. That leads to another condition which is everywhere recognized as a most unfortunate one, and that is in the operation of the railroad we have trains mixed up with twenty-five, thirty and fifty-ton cars, both loaded and empty, which makes a rather dangerous condition. The ideal condition is, of course, all cars of the same capacity.

Q. And standard of strength? A. And standard of strength. Every other industry that we know of wants the high capacity car, and we cannot put it in the anthracite trade extensively. Another thing is, on a twenty-five-ton car we have a dead weight of six-tenths of a pound for each pound of lading. On a thirty-ton car we have a dead weight of five-tenths of a pound for each pound of lading. On a forty-ton car we have a dead weight of forty-five-hundredths of a pound for each pound of lading. On a fifty-ton car we have a dead weight of forty-two-hundredths of a pound for each pound of lading. So there is another condition that the perpetuation of the low capacity car forces on us, that we must continue hauling a greater amount of dead weight for a paying load than we ought to or than we do in any other branch of the business. Again, when a car is put in to load bituminous coal or ore, the car is put in without much preparation, just as it is found. A car that is put in for anthracite loading, must be swept and cleaned, the same as you would for high-class merchandise. If a car of anthracite coal is wrecked (a number of them are wrecked) the coal is scatterd over the ground, and it must be

picked up and paid for by the Railroad Company. It cannot go to market. The Railroad Company must make what use of it it can. If a car of bituminous coal is wrecked, they pick it up usually and send it to market, simply making a deduction for the actual loss in weight, or, if not, we can use it on our engines and get as good results from it as coal that we buy and that has not been wrecked. There is also, of course, a great deal of coal stolen, anthracite coal stolen in transit, and practically no bituminous coal. We have a large force of special officers tracing the thefts of coal right along, and we arrest them for stealing the coal and they get before a magistrate or before a court and say that they were cold and needed the coal, and they are let go. We have had that actually happen time and again. Again, anthracite coal has a tremendous loss in leakage. Take the finer sizes of coal, and nobody has ever found the way yet to get a car that will hold the small sizes of anthracite coal in transit. We are paying tremendous sums every year for coal loss in that way and, in addition to that, we have on our main line track, between St. Clair and Cressona scales and Reading particularly, and to some extent south of Reading, but particularly north of Reading—we have to go over that entire southbound track once in three or four years and take out the ballast, screen it and take out the coal dirt that has gradually leaked out of the cars on to the track. We have to clean it over every three or four years. The fine coal gets in the ballast and packs and simply destroys the drainage, and we have to go over it every three or four years for that reason. There is one other peculiarity about the coal trade, and that is, take our Shamokin Division for example, the coals in the vicinity of Mahanoy City, the southern part of the Shamokin Division, are what is known as Hard White Ash coals. The Shamokin coals are a Red Ash coal and are softer and freer burning. The softer coals are usually in demand South, not only in the southern part of the State, but particularly south of the Pennsylvania State line; while the harder coals are in demand in the North and

West, and we have constantly on the Shamokin Division the peculiar condition of hauling the southern coals north and the northern coal south.

Q. And both ways over these summits? A. And both ways over these summits.

Q. Passing each other? A. Passing each other and running in opposite directions. The people want the coal and they will have it, of course; we must supply it.

Q. The market is very fastidious about the sort of coal it uses, I take it? A. It is indeed.

Q. You have brought your coal from the scales destined to New York tide. I want you to speak of that particularly, because it is rather peculiar to this litigation. Where is the point of divergence of the tracks which lead to Port Reading from the old main line? A. That is at Bridgeport. That is seventy-five miles south of the St. Clair scale.

Q. From that point to Port Reading how does the coal move usually. A. The coal moves over our Norristown Connecting Railroad, down over the Philadelphia, Germantown and Norristown to Plymouth Branch Junction and thence over the Plymouth Branch to Oreland. The Plymouth Branch is a single track line with a maximum grade of about sixty feet to the mile; about eight miles long. We haul a train over the Plymouth Branch with about twenty-six or twenty-eight loads, with two engines.

Q. You mean two engines on a train or two engines in service? A. We put a pushing engine on and push them over the branch.

Q. That is two engines to the train? A. That is two engines to the train. Then they go from Oreland to Jenkintown over our Bethlehem Branch and from Jenkintown to Port Reading Junction over the New York Branch, and, of course, from Port Reading Junction to Port Reading over the Port Reading Railroad.

Q. What is the maximum train load that you can handle from Bridgeport to Port Reading yard? A. Two thousand tons.

Q. How many cars? A. That is about twenty-eight cars.

Q. As compared with the number of cars you haul from the scales to Bridgeport or Philadelphia, Port Richmond, what does that mean? A. We haul three thousand tons from the scales to Bridgeport and two thousand tons from Bridgeport.

Q. Only two-thirds the quantity of the train load going to Port Reading? A. Two-thirds.

Q. This wearing out and destruction of the cars in the service which you have described must be reimbursed, as a matter of course, from the earnings for the carriage of that coal? A. That is the only place to get it from.

Q. You may describe the service of the Port Reading Railroad Company at its terminal, after your service of transportation, delivering the coal into your yards, is ended, so as to get the coal over the piers into the vessels, the service of shifting in the yard to get the coal, as it is needed for a particular boat, up over the trestle or wharf on to the wharf, discharged, weighed and so forth. A. Roughly, we run over the Port Reading tracks with our through trains and from Port Reading Junction to Port Reading, which is seventeen miles, and at Port Reading make delivery of the loads to the Port Reading Railroad in their yard, and the Port Reading Railroad employs the engines and crews that do the local handling, switching cars on to the piers, unloading them, returning the empties to the yard.

Q. Do you know what allowance is made to the Port Reading Railroad Company for that service? A. I understand it is fifteen cents a ton.

Q. That applies to both bituminous and anthracite, I am told? A. I understand it so.

Q. How many miles of tracks, sidings and so forth, and so forth, are operated within the city limits of Philadelphia by the Philadelphia and Reading Railway Company system? A. Approximately three hunderd miles.

Q. And the coal delivered in Philadelphia is distributed all over the territory covered by those three hundred miles of track? A. Yes, sir.

Q. When deliveries are made to coal yards are they in

large quantities on an average or rather small quantities, a few cars to a yard? A. Only a very few cars to each delivery.

Q. I omitted this morning to call your attention to another differentiation in the cost of handling anthracite coal, especially the troubles that come in Winter and Winter storms and rain and ice, and so forth and so forth. Please go into that in some detail. A. In order to understand it properly, the trade demands anthracite coal to be clean. That has led the coal companies to wash all of their coal in the breakers, and it is loaded into the railway cars wet. The smaller sizes, Chestnut and below, when it reaches market, in the Winter, is frozen in the cars, and it is extremely difficult to unload. We have experimented somewhat at our tidewater points with steam plants to thaw out the coal before unloading. We have not been able to do it satisfactorily, and we unload to-day by pick and bar largely when coal is frozen. We have to pick it and bar it out of the cars, having to bar the doors under the cars open. They are also frozen. It makes it very difficult and expensive unloading, and, also, results in considerable damage to the cars. That is a condition, of course, that applies particularly to anthracite coal, on account of its being loaded wet at the breakers.

Q. How is it about the effect of the Winter storms and snowdrifts, in respect to the expense of operation during the Winter? A. The conditions in our coal regions are, of course, particularly severe during the Winter. There is a great deal of snow and cold weather, being a mountainous district.

Q. Does that have any effect particularly on handling the trains up and down these grades, of which you have spoken, as compared with handling it on a comparatively level or low grade line? A. It has a very marked effect on those colliery branches with the hard grades. When we get zero weather we have to reduce our train load about thirty to forty per cent.

Q. You referred in your testimony to abandoned collieries and colliery branches, and so forth, but you went

into no detail about it. What is the effect on the expenditure that has been made by the Railway Company to build coal branches and construct them and maintain them after the abandonment of the collieries? A. It leads to the abandonment of the branch leading to the tracks at the colliery which is abandoned. There are many cases where collieries have been abandoned on our system where the tracks have been taken up. The rail that was in the track, of course, we sold for scrap, but the other material is lost.

Q. So that the cost of construction of those colliery branches must be absorbed in the rates that have been received for transportation during the operation of the colliery? A. Yes, sir.

Q. What do you know of the subject of the increased cost of all kinds of conducting transportation that has been made between the time when the Philadelphia and Reading Railway Company began its operations December 1st, 1896, and the present time? A. In 1897, we were paying on the Shamokin Division for ordinary labor one dollar and twenty cents for a ten-hour day. We were told that we were paying more than the market price for labor, as in the ore mines in the eastern part of Pennsylvania they were paying common labor ninety cents a day of ten hours. We reduced our pay to one dollar and ten cents per day of ten hours, or eleven cents per hour. A short time after this there were some readjustments made, and the rates of pay were raised. I do not recall now just what they were made at that time, but, in 1902 we had a general increase of ten per cent. to all classes of employes, and again in November, 1906, we had another ten per cent. increase; that is ten per cent. on the ten per cent., which means a total of twenty-one per cent. on the scale of wages paid before 1902. In addition to that, in 1906, in making the adjustments, particularly with our train men, we changed from a twelve-hour day to an eleven-hour day. That is, a man started out on a run, and if he made the run in twelve hours he was paid no overtime. We changed the basis then to eleven hours,

so that if he makes the run in twelve hours now he gets a day and one-eleventh, which meant another increase of about a little over eight per cent. There were also a number of concessions made at Harrisburg and Philadelphia, Reading, Newberry Junction and Port Reading, where we raised the pay of our yard men more than the ten per cent. to get them nearer on an equality with what some of the other roads were paying. We also gave them some concessions in the way of calling a crew. In the later days we called a crew for four o'clock in the afternoon. If the crew started out at four o'clock their time began at four o'clock. If he was delayed in the yard or at the terminal, did not get out until five o'clock, his time did not start until five o'clock. We made the concession that the crew should be paid for the time they were called. If we did not get them out of the yard it was our expense and not theirs. The net result, so far as the two increases in pay are concerned, the one in 1902 and the one in 1906, with the other concessions made in 1906, resulted in an increase of not less than twenty-one per cent. to all our employes and as high as twenty-nine and thirty per cent. to other employes, particularly in the train service.

Q. This increase of track service and train service? A. That includes all employes. In addition, there has been a tremendous increase in the price of materials, crossties and lumber and timber, and general supplies which a railroad company uses in the business of transportation.

Q. Notwithstanding all these increases of cost to which you have alluded, there was no increase in rates for transportation? A. I understand not. There has not been in the coal rate.

Q. Since you gave the testimony which I have just put in evidence, on April 28th, 1909, what promotion have you had in the service of the company? A. I was promoted to General Manager three years ago, and a year ago the 1st of January to the office of vice-president and general manager.

Q. Have you any connection with the Philadelphia and Reading Coal and Iron Company? A. None whatever.

Q. Have you ever had? A. Never.

Q. With the Central Railroad Company of New Jersey? A. No, sir.

Q. With the Lehigh and Wilkes-Barre Coal Company? A. No, sir.

Q. With the Lehigh Coal and Navigation Company? A. No, sir.

Q. With the Lehigh and New England Railroad Company? A. No, sir.

Q. With the Lehigh and Hudson River Railroad Company? A. No, sir.

Q. Please state what, if any operating reasons cause you to move anthracite coal from the coal regions to Washington and points south of Wilmington in the way you move it, stating what way that is? A. That coal is moved to Belmont, which is in Philadelphia, via the main line of the Philadelphia and Reading Railway and there delivered to the Pennsylvania Railroad or to Park Junction, which is also in Philadelphia, and there delivered to the Baltimore and Ohio Railroad. The reason for that is that we have ample track facilities on the main line of the Reading Railway for the movement of that coal to Philadelphia and very favorable grades while to move it via the Wilmington and Northern would involve breaking those trains at Birdsboro which is eight miles south of Reading, and delivering it over a very unfavorable line. The movement from north of Reading to be forwarded by either route would be practically the same, but the movement from Reading to Philadelphia via the Philadelphia and Reading Railway is on a river grade with no adverse grade against the loads, and only a very slight grade against the empties returning, enabling us to handle the coal to Philadelphia in trains of about seventy-five cars, three to four thousand tons to the train, depending, of course, upon the capacity of the cars. While as to the Wilmington and Northern, we would have to break up those trains at Birdsboro, or the Wilmington and Northern Junction and move them from there to Joanna, ten and seven-tenths miles, in trains of about twenty cars

each, requiring four trains to move the one Philadelphia and Reading train to Joanna. From Joanna to Cossart, via the Wilmington and Northern, we have forty and six-tenths miles with no adverse grade, but, on account of the alignment, it is not practical to handle more than forty cars to a train, from Cossart to Summit, five and seven-tenths miles, adverse grades limit the train to twenty-five loaded cars. From Summit to Elsmere Junction, which is the connection with the Baltimore and Ohio, there are four and six-tenths miles, and to Wilmington six and six-tenths miles, on which line there is no adverse grade against the loaded movement. There is, however, between Wilmington and Elsmere Junction and Summit an adverse grade against the northbound empties limiting the haul there to thirty cars. From Coatesville to Brandamore on the same line there is a heavy adverse grade against the northbound empties, limiting the movement of empty cars to trains of from twenty to twenty-five. The Wilmington and Northern is a single track railroad of very heavy curvature, running up to twelve and three-fourth degrees, and, as a matter of fact, on the entire Wilmington and Northern Railroad, about seventy miles long, 55.78 per cent. of the track is curved track. So that the Wilmington and Northern is an impracticable route over which to move any considerable volume of business. It is confined largely to the handling of local business, and while it would be possible to double-track the road, and it might be practicable to move the curvatures, it would be impossible to eliminate the grades.

Q. Regardless of any traffic considerations or business policy, then is it a fact that merely from the operating standpoint, you route the coal via the route you do route it? A. Absolutely. We would be seriously hurt attempting to haul it over the Wilmington and Northern.

Q. Can you say whether or not the operating cost of moving the same tonnage over the Wilmington and Northern to Wilmington would necessarily be much larger than via the Philadelphia and Reading to Philadelphia and the other routes that you use? A. It would be very much larger.

Q. You do not have any doubt about that? A. There is no doubt about it. It is the fact.

Q. So somebody would have to pay higher operating cost to get the coal over this cross country single track up and down route if it moved that way? A. Unquestionably.

Q. As an operating man, your headquarters are at Reading, are they not? A. Yes, sir.

Q. Is there any physical connection between the Wilmington and Northern and the Pennsylvania at Reading? A. There is not. The Wilmington and Northern does not reach Reading over its own rails.

Q. In connection with the handling of anthracite coal and your other business to New York, why do you deliver your coal via Port Reading, and your merchandise via Jersey City? A. To begin with, to deliver at Jersey City it would be necessary to give the coal to the Central Railroad of New Jersey at Bound Brook Junction. To handle the volumes of business over the Central Railroad of New Jersey between Bound Brook Junction and Jersey City that we now handle to Port Reading, in addition to the business that travels over the Central Railroad of New Jersey, would, in my opinion, require large additions to the existing track facilities of the Central Railroad of New Jersey between Bound Brook Junction and Jersey City, and would certainly require very greatly enlarged coal pier facilities on the Central Railroad of New Jersey at Communipaw, while at Port Reading there was a great deal of undeveloped territory, and it was a very desirable place for establishing a coal pier or coal piers.

Q. Take some of the other railroads in that vicinity, do any of them in charge of their own system make any such division of their business as that? A. The Pennsylvania Railroad, which has, as you know, excellent terminal facilities for freight at Jersey City, maintain and are further developing coal piers at South Amboy, New Jersey, and the Lehigh Valley Railroad, which also has very excellent freight facilities at Jersey City, maintain and are further developing coal piers at Perth Amboy, New Jersey. Both

Perth Amboy and South Amboy are further from New York than is Port Reading.

Q. Do you know whether the P. & R. and the C. R. R., either of them, serve the Temple Iron Company's collieries? A. I know that the P. & R. does not.

Q. Are you familiar with the general character of the country served by the Philadelphia and Reading Railway system? A. I am.

Q. How do the various lines of the Philadelphia and Reading Railway get into the coal regions? A. The main line of the Philadelphia and Reading Railway runs from Philadelphia to Port Clinton, which is about seventy-eight miles, at Port Clinton the Little Schuylkill Railroad diverts to the right and follows the Little Schuylkill River to Tamaqua, and thence north via Buck Mountain into the Mahanoy Valley, and continues through the Mahanoy Valley through Mahanoy City and Shenandoah and Ashland to Shamokin. That, however, is not the route that the bulk of the coal takes. Instead of diverting at Port Clinton, the main line continues on to Pottsville. Pottsville is ninety-three miles from Philadelphia. At Schuylkill Haven, which is six miles south of Pottsville, the line diverges to the left. It runs into what is known as the west end of the Schuylkill coal region, and by very many branches the collieries in that vicinity are served. North from Pottsville there are a number of collieries in the immediate vicinity, and, also, east of Pottsville, running over to near Tamaqua. There is also a line extending from Pottsville north through St. Clair where we have large engine and car repair shops, and the large classification, by going up the southern slope of Broad Mountain at a gradient of 185 feet to the mile, to the head of Mahanoy Plane. The empty cars are lowered by Mahanoy Plane into the Mahanoy Valley, and the loaded cars are hoisted out of Mahanoy Valley by the same plane. The plane is a double-tracked incline plane, about 1400 feet in length, with a vertical lift of 363 feet. Practically all of the coal that is handled by the Reading Railway from north of Broad Mountain, or in the Mahanoy and Shamokin districts is handled over Mahanoy Plane.

Q. Does your main line running in a generally northerly direction from Port Clinton run up the Schuylkill River? A. Runs up the Schuylkill River.

Q. And the Schuylkill and Susquehanna branch, which diverges at Auburn running to the west, where does that get into the coal region? A. The Schuylkill and Susquehanna does not properly get into the coal region, but at Pine Grove it is crossed by a line leading from the Lebanon Valley branch of the Philadelphia and Reading Railway north to Pine Grove and extending on into the west end coal region. The Schuylkill and Susquehanna runs from Auburn to Rockville.

Q. That runs up the Swatara Creek, does it not? A. Yes, sir.

Q. Take the line that diverges at Port Clinton and runs over to Tamaqua, does that run up the stream as well? A. That follows the Little Schuylkill.

Q. When you get over on the Mahanoy Plane, is the same situation true, that in general the railroad follows the streams? A. From Buck Mountain, which is about ten miles north of Tamaqua the main line of the Reading Railway follows the Mahanoy Valley, which is the valley of the Mahanoy Creek to Gordon, about fifteen miles, and at Gordon it diverges from the valley of the Mahanoy Creek and ascends the southern slope of the Locust Mountain, on grades running as high as 135 feet, to Locust Summit and then follows the northern slope of the Locust Mountain to Shamokin by descending grades of about seventy-five feet to the mile.

Q. Is the Schuylkill region chiefly drained to the west toward the Susquehanna River and to the south toward the Schuylkill River, with the tributaries of each? A. Yes, sir.

Q. Going to the easterly end of the region served by the Philadelphia and Reading line, do you have an ascending or a descending grade in going in that direction? A. An ascending grade all the way from Port Clinton to Buck Mountain.

Q. What is the altitude along the line from Tamaqua to Haucks and Lofty generally above sea level? A. I think Tamaqua is about nine hundred feet above sea level, and Haucks is about twelve hundred feet.

Q. Is that in the nature of the summit along there of the water shed between the Lehigh River and Susquehanna and the Schuylkill River? A. What we know as Buck Mountain is really the dividing line there, and is about fourteen hundred feet above tide.

Q. Coming up the Lehigh River we have the railroads of the Lehigh Valley and the Central Railroad of New Jersey, have we not? A. Yes, sir.

Q. And again from the Lehigh I note on the map that similar creeks run down off that water shed into the Lehigh, such as Sandy Run Creek and Quakake and Nesquehoning, and so on? A. Yes, sir.

Q. What is the direction of the grade going from the Lehigh River to Tamaqua? Are you going up or down grade? A. You are going up grade, but there is a summit east of Tamaqua, about I think ten or eleven miles—it is called Summit Hill, on the Panther Creek Railroad—and the water of the western slope comes into the Schuylkill, and from the eastern slope into the Lehigh.

Q. So that along at Summit Hill, in the Lehigh Coal and Navigation or Panther Creek region, is the ridge of the water shed where the two divide? A. Yes, sir.

Q. And the waters from the west flow into the Schuylkill and the Susquehanna, and the water from the east into the Lehigh? A. Yes, sir.

Q. As an operating question, is there any difficulty in a railroad like the Central Railroad of New Jersey coming up over say its Nesquehoning branch following up the Nesquehoning Creek to the divide in the water shed, and then going down into the Schuylkill and Mahanoy regions and getting coal and carrying it up over the summit down into the next valley and bringing it around to Philadelphia? A. That would, of course, involve a tremendous expense and, at many of the collieries and many of the branches

in the Schuylkill region, the valleys are so narrow, and they are taken up with coal banks, breakers and so forth that in many cases it would be physically impossible to build another railroad into those branches and streams.

Q. Supposing you had the railroad built and started to operate it, would you have any operating disadvantages as compared with the Philadelphia and Reading Railway? A. Very decided ones.

Q. Would it be a natural or normal thing for any railroad man to operate and route coal in any such way? A. It would not.

Q. The Lehigh Valley Railroad, how does it get into the Schuylkill region? A. By following the line from Penn Haven Junction up to the west and crossing the Broad Mountain at Delano, which is, I think, about 1800 feet above tide, following along the Broad Mountain from there to Mahanoy City, Shenandoah, and on via Centralia to Mt. Carmel.

Q. They come up the bed of Quakake Creek, do they not? A. Yes, sir.

Q. And they have pre-empted that route? A. They have.

Q. They have a southern route in which they follow up Lizard Creek, have they not? A. They have what we call the Lizard Creek Branch, which runs from Lizard Creek Junction over into the Schuylkill region, crossing our line at Schuylkill Haven, and running west to Blackwood colliery, which is seven or eight miles west of Schuylkill Haven.

Q. Just north of where the Lehigh Valley line runs up there by Lizard Creek, what physical characteristic is there just north of their line in the vicinity of Pottsville? A. There is a very narrow valley there through which the Schuylkill River flows, and on one side of which is located the Philadelphia and Reading Railway, and on the other the Schuylkill division of the Pennsylvania Railroad Company.

Q. That valley is a pass through Sharp Mountain, is it not? A. Yes, sir.

Q. And Sharp Mountain runs along the entire Southern

side of the lower southern region, does it not? A. Sharp Mountain is really the southern limit of the coal field.

Q. At different points in Sharp Mountain there are, however, other passes and creeks, like the Swatara Creek? A. Yes, sir.

Q. Are those creeks pre-empted by railroads? A. They are.

Q. Would it be a commercial feasible railroad scheme to try to put an additional railroad into those passes formed by those streams where those existing railroads already are? A. I should say not.

Q. Could it be accomplished at anything like the expenditure of money which the present railway systems have invested? A. It would cost many times more, I should say, to duplicate the existing roads in the territory.

Q. You formerly worked for the Pennsylvania Railroad Company, did you not? A. I did for ten years and a half.

Q. At about what period was that? A. From 1881 until 1891.

Q. During that period did the Pennsylvania Railroad build into this region? A. They built the road into Pottsville and Shenandoah and on up over the Broad Mountain to connect with the Lehigh Valley Railroad at New Boston Junction in the years 1885, 1886 and 1887.

Q. Was that a very expensive piece of railroad construction? A. Very.

Q. Have you any idea what it cost? A. My connection with that extension was on the eight miles from St. Clair north to New Boston Junction, and the only figures I have in my mind now are ones which made an impression on me at that time, and that was two miles of that line from two miles north of St. Clair to two miles north of that point, which cost about $148,000 to grade alone.

Q. Simply to furnish the grade? A. Simply to prepare the graded surface for the tracks.

Q. Without a railroad on it? A. With no railroad on it.

Q. Were you an engineer on that? A. I was in charge of it latterly. I was rodman on it in the first place and before I left there I was in charge of it.

Q. Is your operating organization in any way a part of the department of operating organization of the Central Railroad of New Jersey? A. Not in any way.

Q. You do, however, operate the Wilmington and Northern Railroad, do you not? A. We do; yes, sir.

Q. As matter of fact, does the Central Railroad of New Jersey serve the Schuylkill region? A. It does not.

Q. Would it be necessary for them to either build a railroad of their own into that region or use the lines of some other railroad? A. That is the only way they could get in there.

Q. Are the roads parallel or competing in any sense that you know of as an operating man? A. As a matter of fact, they are not parallel and I know of no way that they could be considered competing lines.

Q. Do they have a great deal of through and joint business which you have to handle on the Reading's end? A. They have a very great deal of that.

Q. Are there a great number of cars and trains interchanged between the two systems? A. Yes, sir.

Q. Going from points on one system to points on the other? A. A very great many.

Q. Is it a great operating business to handle that interchanging business between the two lines? A. It is.

Q. In the matter of distribution of cars or in any other way that you can think of from the operating standpoint, do you treat the Philadelphia and Reading Coal and Iron Company any differently than you treat any other shipper? A. I have been intimately connected with that part of the business from 1897 until the present time, and I have never known of any distinction being made in the furnishing of cars to the Philadelphia and Reading Coal and Iron Company from that of furnishing cars to the other operations; and, in fact, in that time, I have never had a single complaint from any shipper that we were favoring one over another.

Q. Do you issue passes on your railroad? A. We do.

Q. Are you the officer who issues passes? A. Many of them are issued through my office.

Q. Do you ever issue any passes to the Philadelphia and Reading Coal and Iron Company employees? A. We do not.

Q. Take it in the matter of the occupation of right of way or the Railway Company's occupation of the lands of the Coal and Iron Company, do you deal any differently with them than you do with any other land owner? A. Not in any way.

Q. Do you insist upon contracts, and do they insist upon contracts with you for the encroachments of either on the lands of the other? A. Absolutely.

Q. What other dealings have you in the operating department of the Philadelphia and Reading Coal and Iron Company except the matter of car distribution and right of way matters? Any? A. We buy a great deal of fuel coal from the Philadelphia and Reading Coal and Iron Company.

Q. In buying that coal do you buy any differently than you would from the Lehigh Valley Coal Company, and pay for your coal? A. We pay the circular price.

Q. Do you pay real money for it? A. We do.

(Adjourned until Tuesday, March 31st, 1914, at 11 o'clock, A. M.)

PHILADELPHIA, Tuesday, March 31st, 1914.
at 11 o'clock A. M.

Present.—The Examiner. Messrs. Coudert, Kingsbury and Gordon, Special Assistants to the United States Attorney General, for the Government.

Messrs. Heebner, Reynolds, Turner and Drinker, representing the defendants.

Examination of AGNEW THOMPSON DICE, resumed:—

By MR. REYNOLDS:

Q. What distance does the Central Railroad of New Jersey haul coal in moving it from the Nesquehoning col-

liery to its tide terminals at Elizabethport or New York Harbor? A. One hundred and fourteen miles.

Q. What is the general character of the grade, and, in which direction? A. The general character of the grade is descending from Nesquehoning colliery to tidewater in favor of the loaded movement.

Q. What would be the mileage from the Nesquehoning colliery via the P. & R. system to tidewater at Port Reading? A. One hundred and seventy-two and a half miles.

Q. How would that movement be routed, over what lines of railroad? A. That would go from Nesquehoning colliery to Hauto, thence to Tamaqua, over what is now the L. & N. E. Railroad and thence to Port Reading via the P. & R.

Q. What would that involve in the way of interchange and make-up and break-up of the trains? A. It would involve the breaking up and classifying of these trains at Tamaqua and again at Bridgeport or Abrams, which is twenty miles north of Philadelphia, and, of course, the carrying over three different lines.

Q. Take some colliery in your Reading territory and make a similar comparison of routing to Philadelphia by the two lines. A. As an instance, Kehley Run colliery, which is located on the Philadelphia and Reading Railway at Shenandoah, and is operated by Madeira, Hill & Co., the coal is shipped from that colliery direct to Philadelphia via the Philadelphia and Reading Railway, going from Shenandoah to Mahanoy Plane, thence over Mahanoy Plane to the St. Clair yards where the coal is weighed and made up into trains and hauled to Philadelphia, a total distance of one hundred and eleven and four-tenths miles from the colliery to Philadelphia. From the same colliery to move the coal to Philadelphia by existing routes I figure out a movement from Shenandoah to Mahanoy Plane, thence via the Buck Mountain tunnel to Haucks on the Central Railroad of New Jersey, thence by the Central Railroad of New Jersey to Phillipsburg, and there delivered to the Pennsylvania Railroad for move-

ment to Philadelphia, which is, I think, as short a line as is possible to get from Shenandoah to Philadelphia, except via our line. That distance is a hundred and sixty-six miles.

Q. That involves, I understood you to say, the three carriers? A. Three carriers.

Q. The Jersey Central, the Pennsylvania and also your line? A. Yes, sir.

Q. You would have to deliver it first to the Jersey Central in order to get it started? A. Yes, sir.

Q. What is the state of railroad development in general terms in the coal regions served by the Philadelphia and Reading Railway? A. In my opinion, there are more miles of main tracks, branches and sidings in that particular part of the anthracite coal region, and, I believe, in all of the anthracite coal region, than in any other territory that I know of in the United States outside of the large cities, such as Chicago, for example. In fact, the development is such that the existing railroads are able to handle all of the coal that the market will take by operating from sixty to seventy per cent. of the time.

Q. Does the result of that operation on that basis, sixty or seventy per cent., involve a very irregular use of equipment? A. A very irregular use. It requires the Reading Railway, and of course the other railways in the anthracite coal region to maintain to the same extent, to have equipment so that at the times that the market is active and will take the coals, that the railways are able to market them. At other times in the year when the demand is light, our problem is to find tracks upon which to store the carriage for which we have no use. I had some figures of that taken off our records the other day. From January 1st, 1908, to August 31st, 1909, there was a constant surplus of coal cars on the line of the Philadelphia and Reading Railway running from 565 cars in August, 1909, to 12,782 cars in March, 1908. September 1st, 1909, to December 31st, 1910, the highest shortage was 745 cars in March, 1910, while the greatest surplus during the same period was in July, 1910, 3952 cars. In the year

1911 there was a surplus every day reaching 6988 cars in the month of March. During the year 1912, the highest surplus was in April 12,746 cars, while in October the car shortage was 911 cars. In 1913, during April we had a surplus of 4456 cars, while in November there was a shortage of 572 cars. In January and February of this year the highest surplus was in February, 6715 cars, while there was a shortage in the same month of 420 cars. Our total equipment is, coal cars 25,349, total capacity in tons of 2240 pounds each, 837,031.25 tons, an average capacity per car of 32.2 tons. While there are in a few of these instances small shortages shown, as matter of fact, the call for cars for loading at the collieries is made at seven o'clock in the morning, and while there may be a shortage reported of the four or five hundred cars by the time the cars that are then available are loaded, that shortage is usually made up. So that we are rarely short of coal cars on the Reading Railroad because of this large provision that we have made for coal cars.

Q. You spoke the other day of some costs of construction of road into this region of the Schuylkill Valley branch of the Pennsylvania Railroad while you were the engineer in charge of construction. Have you within recent years discussed any changes of your line in the regions which involved the making of very definite estimates of the cost of construction? A. We have.

Q. What line was that? A. In my testimony the other day I briefly described Mahanoy Plane, over which practically all of the anthracite coal that is mined on the Reading Railway north of the Broad Mountain is hoisted. We have always felt that the Plane was not an economical way of handling coal if another route could be found leading out of the coal regions and connecting with our existing lines, with heavy reasonable grades, and the distance would not be too great. In 1906 Mr. Joseph S. Harris, who was an ex-president of this company, and who was still in the employ of the company, together with Mr. Hunter, our Chief Engineer, were commissioned to make extensive surveys of the coal region, with a view of completing an alter-

nate line and avoiding the plane. We were at that time confronted with the renewing of the plane and spending a great deal of money on the plane and large new yards at St. Clair for connecting this alternate line. After very extensive and careful examination and surveys a line was projected leading from Herndon Branch Junction, which is just at the northern edge of Shamokin city, crossing the Locust Mountain, diverging to the right and then crossing the Broad Mountain and coming out at what is known as Westwood, which is half-way between Schuylkill Haven and Minersville, both of which points are shown on the map. The line that seemed feasible was 31.8 miles in length. An estimate for which, for double track, at that time, when it was made, was something over seven million and a half dollars. If it was estimated on the figures of to-day, with the cost of labor and materials, that same line would cost a little over nine millions of dollars. While I testified the other day as to the cost of two miles of line north of St. Clair, I omitted to say that that was built twenty-nine years ago, when prices were very much lower than they are to-day. I have no doubt that line would cost fifty per cent. more if built to-day than it actually cost when it was built.

Q. To what extent do you operate despatch lines over the Jersey Central and the Reading? A. We have the Central States Despatch, which is a fast freight line, originating on the Baltimore and Ohio Railroad, throughout the west, in fact, all the way from Martinsburg, which is the connection of the Cumberland Valley with the Baltimore and Ohio Railroad, west to St. Louis and Chicago, and, of course, all the intervening cities. That freight is delivered to the Cumberland Valley at Harrisburg and at Martinsburg moved by them to us at Shippensburg. We move it over to Allentown and there deliver it to the Central Railroad Company of New Jersey, who move it to Jersey City. There is a regularly established schedule and one or more heavy tonnage fast freight trains are moved on that line every day in both directions.

Q. Is that an expedited service? A. Yes, sir; that is a quick despatch service.

Q. Does any of that traffic go to New England? A. A considerable amount of that traffic diverts at Phillipsburg and is given to the L. & H. Railway, and by them taken to Newberry Junction, where it is given to the New York, New Haven and Hartford for distribution throughout New England. We also have another line, the Blue Ridge Despatch Line, which is a similar fast freight line, except that the Blue Ridge Despatch Line is operated in the west and the southwest by the Chesapeake and Ohio and Norfolk and Western Railway. That line touches much of the same region that the Central States Despatch Line touches on the B. & O., and, of course, some territories that the B. & O. does not reach. That freight is moved via the Chesapeake and Ohio to Basic Junction and there given to the Norfolk and Western, and by them moved to Hagerstown to the Western Maryland Railroad, who in turn move it to Shippensburg and give it to the P. & R., and we move it to Allentown and give it to the Central Railroad of New Jersey. Some of that freight is also diverted at Phillipsburg and handled to New England, the remainder going to Jersey City. That is also a quick despatch or fast freight. There are heavy volumes of that traffic moving in both directions every day. We have a schedule movement in both directions.

Q. Have you any of that despatch business of the same character with your New York Central connections? A. There is a despatch freight line running out of Jersey City going over the Central Railroad of New Jersey given to us at Haucks and moved by the P. & R. from Haucks to Newberry Junction, and there delivered to the New York Central, and that is fast freight for movement through the middle west and as far west as Chicago.

Q. And, of course, it moves in the opposite direction also? A. There is a movement in the opposite direction every day

Q. That is known as the Lake Shore and Jersey Central Despatch Line, is it not? A. Yes, sir.

Q. All three of these despatch line routes are across what we may call the upper portion of the Reading system, and do not route via Philadelphia, as I understand your description? A. That is right.

Q. How much of a factor as an operating matter do you find the competition of the canals? A. Nothing. Almost nothing.

Q. Why not? A. To begin with, the canals are located along and follow the water levels, reaching the various towns and communities at the water levels, making it difficult and expensive to distribute any materials that are handled by the canal movement users or producers. In the first place, a person establishing a coal yard along a canal, must take into consideration that the canal will, by reason of weather conditions, only operate from seven to eight months in the year at the most, so that he must first provide room enough in his coal yard to store sufficient coal to last him during the time that navigation is closed, and, he must also be sure that he has sufficient capital or credit not only to pay for the additional property necessary upon which to store the coal, but, also, to carry the additional coal in stock during the closed period. In ordering coal by canal boats he must take a cargo at a time, which is about 175 tons. Now, in unloading the coal from a canal boat it must be done, and is usually done by machinery, and that hoisting machinery is, of course, expensive, not only in its installation and operation, but also, in the fact that in the unloading of the coal much of the coal, particularly domestic sizes, is broken, and there is a great deal of waste. The difference with the yard on the railroad is that the man on the railroad usually has a trestle upon which he has a car of coal pushed up and placed on the trestle, and he goes along and opens the bottom of the car and the coal rolls down into the bin with the minimum of breakage and the minimum of labor.

Q. The law of gravitation does the work? A. Yes, sir. Those are the reasons he selects the railroad instead of the canal.

Cross examination.

By Mr. Kingsbury:

Q. It is physically possible, is it not, for coal coming from the collieries served by the Panther Creek Railroad, now a part of the Lehigh and New England, to go to tidewater at New York either via the Reading or via the Central Railroad of New Jersey? A. It is physically possible. If it were all moved in that direction, it would require some readjustment of our yards at a place like Tamaqua, for example, and also probably at Bridgeport.

Q. But, so far as the mere question of actual physical connection of railroads is concerned, it can be done? A. Yes, sir.

Q. The difficulties are difficulties of routing and breaking the trains, such as you testified to? A. And some difficulty of construction in providing more yard facilities.

Q. That is not a matter of transportation? A. I should say it was. The matter of yards in connection with transportation is a very important one.

Q. The yards are principally for storage of cars when not in use? A. No.

Q. What is their purpose in that connection? A. The purpose of yards is to have a place where you can pull trains in, break them up, re-classify the cars so that you can shift the cars, put them in trains in proper position for their ultimate destination. We have never built a foot of yard track on which to store cars.

Q. Then they are for shifting cars? A. Shifting and classifying, yes, sir.

Q. What were the respective distances from Nesquehoning to tide to which you testified? A. From Nesquehoning to tide is 114 miles via the Central Railroad of New Jersey, that is from Nesquehoning colliery to tide on the Central Railroad of New Jersey, and from Nesquehoning to Port Reading on the P. and R. Railway is 172.5 miles.

Q. Do you know what the rates are by those two routes? A. I do not know.

Q. You do not know at all? A. No, sir; I am not informed as to the rates at all.

Q. You do not know whether they are the same or whether there is a difference? A. I really do not know.

Q. You testified at the last session that in your opinion the Central Railroad of New Jersey and the Philadelphia and Reading were not parallel or competing I believe? A. I did.

Q. How do you define "parallel and competing" as applied to railroads? A. The question of being parallel is a matter of fact; it is a matter that is obvious to any one; you can easily see, at least I can, that the Philadelphia and Reading and the Central Railroad are not parallel.

Q. For two railroads to be parallel, of course you do not mean that they would have to be absolutely and geometrically parallel through their entire length? A. Not at all. But I should say that they ought to start from the same point and reach the same point to be in a general way parallel.

Q. Must they start from absolutely the same spot, or would it be sufficient if they started from points near each other, in the same region, to make them parallel in that sense of the word? A. Yes, sir. They should not necessarily start from the same point, but, I think you would have to have some limit to be near each other according to what the definition of "near" might be.

Q. What would be your definition of "near" for that purpose? A. I should say the same city, the same town, the same locality.

Q. By "the same locality," that seems a somewhat wider phrase than the same city or town. What do you mean by the same locality? A. I should mean by locality a different term for a town, where no town existed, where there were a few manufacturers.

Q. What would you put as the extreme distance apart in miles that they might be in order to start from, as you say, the same general point? A. I think I would rather have a particular case before I would want to say that. I do not know that I ought to say any particular distance in miles. I think the other definition expresses my idea of it perhaps as well as I could express it.

Q. Must railroads be parallel in order to be competing as you define the words, or might they be competing without being strictly parallel, in your view? A. As applied to the two roads, I said that as matter of fact the two lines were not parallel, and in my opinion were not competing. That was based, if you please, on observation. I was connected with the Reading Railroad, in the position of Superintendent on the Atlantic City Railroad, where we connected with the Central Railroad of New Jersey, from 1894 to 1897, and with the Shamokin Division of the Philadelphia and Reading Railroad, which includes the upper part of the Schuylkill region, from 1897 to 1903. That covers three years on the Atlantic City Railroad and four years on the Shamokin division as superintendent, I believe before there was any question of securing control of the Central Railroad of New Jersey. Now, as matter of fact, I never knew any one in that way to consider that the lines were in any way competing.

Q. What I am trying to get at now is just what you mean by the word "competing," so I ask you as a railroad man whether in your opinion two roads must be parallel in order to make them competitive, or whether they might be competing railroads from the transportation standpoint even if they were not within your definition parallel? A. I think I answered that. They need not necessarily be parallel or start from exactly the same spot.

Q. Need they run over parallel routes through their entire distance in order to be competing? A. I should think to be competing properly they would have to compete for the same business from one point to another point.

Q. At every point along the line? A. Not necessarily.

Q. Are there any railroads which serve the Schuylkill region which you consider competing with the Reading? A. The Pennsylvania Railroad is a sharp competitor with ourselves between Philadelphia and Pottsville and in parts of the Schuylkill region.

Q. For the transportation of anthracite coal? A. And other commodities and passengers.

Q. Does it serve any considerable number of the same collieries that you do? A. One.

Q. Is that the only colliery for which it competes with you—the coal of that one colliery? A. There is one other colliery that we serve with our engines, and from which we deliver a part of the product to the Pennsylvania for transportation to market.

Q. That is the limit of the competition between you and the Pennsylvania in your view? A. They give us from two other collieries part of the product from those collieries for shipment over our lines.

Q. Who give you? A. The Pennsylvania Railroad.

Q. What do you mean by they give it to you? A. They deliver it to us in the sense that I used the word give.

Q. There are some collieries which the Pennsylvania Railroad serves and which you do not directly tap, and for part of that coal you compete with the Pennsylvania? A. We get part of that coal from the Pennsylvania, and we give them part of the coal from two other collieries.

Q. How does this competition between your road and the Pennsylvania express itself? A. It expresses itself perhaps best in the Shamokin region, for example, where they reach a number of collieries which we do not reach. We reach a number of collieries which they do not reach. The products of those collieries go to the same market to a very large extent. They go on the one hand via the Philadelphia and Reading Railway, and on the other via the P. R. R., the Philadelphia and Reading on the one side and the P. R. R. on the other, and that business, of course, is sharply competitive.

Q. How do you compete for that? By changing your rates? A. I know nothing about that. The business is competitive, generally considered so.

Q. What do you do to try to get it? A. I do not do anything.

Q. All you have to do is moving it after you have got it? A. That is my job, yes.

Q. You know as to that the two roads are each trying to get the same business? A. I have heard the sales agents

talking a good deal about trying to beat the other fellow in selling it.

Q. Could either of those roads get that same coal and haul it? A. The Pennsylvania Railroad does not have tracks into the collieries that are served by the Reading, nor do the Reading have tracks into the collieries served by the Pennsylvania Railroad.

Q. Do you know whether this competition is merely a competition for the transportation of the coal, or is also a competition for the sale of the coal in the markets? A. The competition that I spoke of was principally for the sale of the coal.

Q. And there is also some competition for the transportation, is there not? A. I should consider the whole situation a competitive one.

Q. Do you know whether the Reading Railway buys supply coal from any coal company other than the Philadelphia and Reading Coal and Iron Company? A. I do not know that we do.

Q. You do buy large amounts of supply coal from the Philadelphia and Reading Coal and Iron Company, do you not? A. We do; yes. That is, anthracite coal. Bituminous coal we buy from a great number of shippers.

Q. When I speak of "coal" I mean anthracite coal unless I specify to the contrary. You do not know of any other source of supply of anthracite coal from which the Reading Railroad buys than the affiliated coal company? A. I do not.

Q. As I understood you to testify this morning, you consider that the coal region is rather overbuilt with railroads, do you not? A. That is my judgment, yes.

Q. There is not enough business to supply them all? A. As a matter of fact, there is not, neither in coal, other commodities nor passengers.

Q. The anthracite coal business both in transportation and in sale is distinctly a seasonable business, is it not, that comes at certain times of the year in much greater quantities than at others? A. Yes, sir.

Q. And you have to be in a position to handle it at the

busy seasons irrespective of what you do in the quiet seasons? A. That is right.

By MR. COUDERT:

Q. You have spoken of the canals. Kindly describe the canal routes by which coal may go from the anthracite fields to Philadelphia? You are familiar with them? A. I am not very familiar with any but the Schuylkill canal.

Q. Describe the route of coal by the Schuylkill canal. A. The Schuylkill canal many years ago was built from Philadelphia to Port Carbon, which is about two miles east of Pottsville. There was some coal hauled by wagons at that time to the canal for shipment.

Q. From Pottsville to the canal for shipment? A. From the mines in the vicinity of the head of the canal. The canal did not when it was built nor has it at any time reached any coal mine.

Q. How near is it to the nearest coal mine? What is the distance from the canal to the nearest coal mine? A. At that time it was about five miles. There has been within the past eight or ten years a small colliery opened up within I should say a mile of the north terminus of the canal, but that colliery was not opened at that time.

Q. So that to-day the canal runs to within a mile of a colliery? A. No. I should have said about thirty years ago the canal was abandoned from Port Carbon to Schuylkill Haven, a distance of eight or nine miles, and about twenty-six or twenty-seven years ago it was abandoned to Port Clinton, a further distance of about twelve miles. So that the north terminus of the Schuylkill canal to-day is at Port Clinton, ten to twenty miles from its original northern terminus.

Q. But the original northern terminus to-day is only a mile from a coal colliery? A. From a small colliery.

Q. And some thirty years you say they have been abandoned? A. Yes, sir.

Q. The colliery or the canal? A. The canal. When the canal was built it was about five miles from the nearest colliery. About thirty years ago, the northern end of the canal was abandoned. Two or three years ago the colliery

was opened within about a mile of the original head of the canal.

Q. So that if the canal were worked to-day it runs within a mile of the colliery? A. That is one small colliery.

Q. The reason that it does not transport to-day from the collieries is that the Reading system does not work it, is it not? A. My opinion is that the canal was abandoned from purely economic reasons, as canals have been elsewhere.

Q. The reason to-day is, it is simply not worked by the Reading system? It could be worked. Leaving out the economic question, it could be worked physically, coal could come from the collieries on to the canal and to Philadelphia? A. It would be physically possible. It is not probable.

Q. You think it would be more expensive than the railroad because of the difficulty of taking the coal from the canal boats? A. The difficulty of putting the coal on the canal boat and taking it off the canal boat, and the indisposition of anybody to handle coal by canal.

Q. It is, as a matter of fact, your knowledge, is it not, that all over the United States there is a great movement for canal transportation, and the Government of the United States and various States are spending millions of dollars for that purpose? A. I do not know of any one who is well informed on transportation matters who is agitating canal transportation.

By Mr. Kingsbury:

Q. Take the Reading system as a whole, with what other railroads or railroad systems do you consider yourself in competition? You have testified that you consider that the Pennsylvania Railroad is a competitor for a certain amount of anthracite coal traffic. Are there any other railroads anywhere with which you are competitive for any kind of traffic? A. I cannot say that there are.

Q. You have a complete monopoly? A. We have not a complete monopoly at all, because we are sharply competitive with the Pennsylvania Railroad.

Q. That is the only railroad with which you compete in

any way for any kind of traffic? A. I should say in any practical way.

Q. No competition with the Lehigh Valley? A. We touch almost no territory that the Lehigh Valley touches. In fact, we supplement the Lehigh Valley Railroad by furnishing them a Philadelphia terminus.

Q. No competition with the Lackawanna? A. No.

Q. None with the Erie? A. No.

Q. You interchange freight with the Lehigh Valley, do you not? A. Yes, sir.

Q. Where and by what roads? A. Our principal interchange with the Lehigh Valley is at South Bethlehem and at East Penn Junction, which is at Allentown, five miles from Bethlehem—at those two points we interchange considerable freight with the Lehigh Valley.

Q. What is the general movement of that freight which is interchanged? A. A great deal of that freight is grain that is coming via the lakes to Buffalo and then via the Lehigh Valley to Allentown, and then via the Reading to Philadelphia, and is exported from Philadelphia. Of course, there is a considerable amount of ordinary merchandise freight coming from localities and towns that are served by the Philadelphia and Reading Railway, and some towns and localities that are served by the Lehigh Valley Railroad, and a reverse movement of a similar character.

Q. What is the principal freight you deliver to the Lehigh Valley? A. The principal freight I should say was merchandise from Philadelphia.

By Mr. Coudert:

Q. As a matter of fact, the rates by canal transportation are lower than the railroad transportation? A. I understand that they are; yes, sir.

Q. So that really the great difficulty with the canal is the difficulty of dumping the coal from the boat on shore into the receptacle into which it is to go? A. That is a part of the difficulty.

Q. That is the main difficulty, is it not? A. I should not say that it was.

Q. Why is it not? A. For the reason that the coal yards along the canal, as I explained a little while ago, are located along water level, are distant from the points of distribution in the towns and localities they serve. The canal navigation is closed for four or five months during the year.

Q. As to these coal yards, that is not a very serious matter, is it, if the canal runs within a mile or nearer to the points of distribution? What is the difficulty of locating coal yards? A. The principal difficulty is that people will not locate them there.

Q. Why not? A. They try to get on the railroad. They do not want to be on the canal.

Q. Of course, because at the present time they prefer the railroad transportation? A. They can get coal by the canal.

Q. If they preferred canal transportation? In other words, if it were cheaper, you would have all the coal yards you wanted? A. No; it is there, and it is cheaper, but they do not want it. They want their yards on the railroad.

Q. Why? A. For the reasons I have explained, that they can get coal any time of the year, they can get it in any size cargo they want, they do not have to make investment for property and build a large yard and do not need capital to carry a winter supply of coal when they can get it by rail.

Q. So that would apply to canal transportation generally, and your opinion is that canal transportation is of practically no value? A. That is my opinion.

Q. The fact that all the rest of the United States is against you in that proposition would not influence you at all, would it? A. So far as I know, the rest of the United States is with me. Canal transportation has been abandoned everywhere I know of. I do not know of any canal that has ever been operated successfully. They have all been abandoned that I know of.

Q. You are not aware of the fact that New York State is expending two hundred millions of dollars to open a canal? A. I am not aware of that. And, the fact that

they are spending it would not convince me that it was a wise movement from a financial standpoint.

Q. And that the Government of the United States is spending immense sums of money? A. That would not convince me. I would rather see it tried and see what the result is.

Q. Nothing would convince you that canal navigation was valuable, and you are pleased that the railroads have dismantled the canals and put them out of business? A. I am judging from past experience in canals.

Q. That is to say, an experience that dates back—this canal was discontinued thirty years ago? A. Not only the Schuylkill canal, but that has been the experience all over the country.

Q. Confine yourself to the Schuylkill canal. That was designedly abandoned by the railroad thirty years ago. A. I do not know that it was.

Q. That it was abandoned? A. Yes, sir; the upper end.

Q. It was abandoned by design? A. The upper end was abandoned.

Q. For thirty years? A. Yes, sir.

Q. Between the coal fields —— A. Yes, sir. It is still in operation between Port Clinton and Philadelphia.

Q. The rest of it is abandoned? A. The northern terminus.

WILLIAM C. HOPE, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your connection with the defendant railroads? A. I am general passenger agent of the Central Railroad of New Jersey.

Q. How long have you been in the employ of the Central Railroad of New Jersey? A. Since 1879.

Q. Always in the passenger department? A. Yes, sir.

Q. At my request have you prepared certain statements showing the growth of the interchange of passenger business between the Central Railroad of New Jersey and the Philadelphia and Reading Railway since the date of the

acquisition of the majority interest of the Jersey Central stock by the Reading in 1901? A. Yes, sir.

Q. Taking up the business from points on the Central Railroad east of Bound Brook to points on the Philadelphia and Reading west of Bound Brook and connecting line points, and movement in the reverse direction, what has been the growth of that business between 1901 and 1913? A. In 1901 the revenue accruing to the Central Railroad of New Jersey on that business was $341,872.19, and in 1913, $645,037.33, an increase of $303,165.00.

Q. Will you please put into the record at this point your tabulation year by year for that increase?

The witness produced the following statement:—

"Central R. R. of New Jersey Earnings from Joint Service with Philadelphia and Reading Railway, via Bound Brook, Including Passengers Traveling on Mileage Tickets.

1901	$341,872.19
1902	382,852.28
1903	441,595.09
1904	460,701.23
1905	500,026.78
1906	590,975.64
1907	619,454.01
1908	550,704.41
1909	603,604.22
1910	604,401.51
1911	610,675.95
1912	610,506.34
1913	645,037.33

"Increase for 1913 over 1901, $303,165.14—88%"

Q. With what railroad system does that joint rate of the Reading and the Jersey Central compete? A. The Pennsylvania Railroad.

Q. Can you say from your knowledge of the business whether the Philadelphia and Reading Railway's share of earnings would be as much or more than that of the

Jersey Central on that business? A. Not less than twice as large. They have two-thirds of the mileage between New York and Philadelphia.

Q. Coming to the business via Bethlehem, your through service with the Philadelphia and Reading between Scranton and Philadelphia, what was that business in 1901 as far as the earnings of the Jersey Central were concerned? A. In 1901 it was $17,614.48, and in 1913, $76,693.05.

Q. With what railroad or railroads does that joint line between Philadelphia and Scranton compete? A. It competes with the Pennsylvania and the Lackawanna via Manunka Chunk.

Q. That is a joint rate formed by those two companies? A. They operate through service that way.

Q. Please file with the Examiner a copy of your tabulation of the growth of that business year by year for the same period.

The witness produced the following statement:—

"Central R. R. of New Jersey Earnings from Joint Service with Philadelphia and Reading Railway, via Bethlehem—Through Service between Scranton and Philadelphia, Excluding Passengers Traveling on Mileage Tickets.

1901	$17,614.48
1902	36,170.62
1903	46,944.10
1904	47,707.03
1905	58,377.31
1906	67,299.12
1907	66,476.75
1908	77,889.90
1909	71,801.42
1910	72,310.11
1911	75,531.90
1912	77,789.55
1913	76,693.05

"Increase for 1913 over 1901, $59,078.57—335%."

Q. In what year was that through business established between Scranton and Philadelphia? A. In 1901, in November.

Q. Going to the Harrisburg route, the joint service of the Philadelphia and Reading via Allentown, what was the business shown by the earnings of the Jersey Central in 1901? A. $14,553.69.

Q. In 1913? A. $61,516.41.

Q. Please file with the Examiner a tabulation showing the growth of that business year by year during the period referred to.

The witness produced the following statement: —

"Central R. R. of New Jersey Earnings from Joint Service with Philadelphia and Reading Railway, via Allentown, Excluding Passengers Traveling on Mileage Tickets.

1901	$14,553.69
1902	22,081.82
1903	31,022.50
1904	30,636.18
1905	42,284.95
1906	48,230.78
1907	50,579.81
1908	45,970.86
1909	49,462.64
1910	53,595.22
1911	53,952.40
1912	57,147.49
1913	61,516.41

"Increase for 1913 over 1901, $46,962.72—322%."

Q. What year and month was that route established? A. That was in May, 1902.

Q. What is the line with which that joint service competes? A. The Pennsylvania Railroad.

Q. Going next to the Atlantic City service via Winslow Junction, made up of the Jersey Central and the Philadel-

phia and Reading subsidiary, the Atlantic City line, what was that business in 1901? A. $43,064.34.

Q. What was it in 1913? A. $126,438.90.

Q. With what line of railroad does that joint route compete? A. The Pennsylvania Railroad.

Q. I notice that following 1910 there was a very considerable drop in the earnings of that line from New York to Atlantic City. As a traffic expert, to what did you attribute that falling off of the earnings? A. That was caused solely by the opening of the uptown station of the Pennsylvania Railroad.

Q. Will you file with the Examiner a tabulation showing the increase or change in the volume of that business for the period mentioned?

The witness produced the following statement:—

"Central R. R. of New Jersey Earnings from Joint Service with Philadelphia and Reading Railway, via Winslow Junction, Excluding Passengers Traveling on Mileage Tickets.

1901	$43,064.34
1902	61,694.61
1903	73,331.23
1904	70,992.68
1905	88,805.85
1906	113,224.96
1907	123,583.38
1908	141,049.76
1909	147,282.81
1910	161,996.35
1911	147,380.26
1912	123,741.41
1913	126,438.90

Increase for 1913 over 1901, $83,374.56—193%."

Q. As to all these statements what form of ticket is covered by these earnings? A. Our accounts are kept so that the statement of revenue exchange business with the Philadelphia and Reading includes all classes of tickets,

that is, the single trip or excursion tickets, and mileage tickets. But on the other points it only includes the through tickets. All mileage tickets go into our revenue as local business.

Q. So there is no way of tracing the amount of revenue derived from the sale of mileage tickets used on these routes? A. No, sir.

Q. What, in your judgment and experience in the relation of mileage transportation to trip ticket transportation, is the relation of those earnings on trip tickets to the total earnings? A. From investigations that I have made I am fully satisfied that there are fully as many passengers traveling on mileage tickets on the through trains between New York and Scranton and New York and Harrisburg as there are on the ordinary form of ticket.

Q. You have no through service with the Philadelphia and Reading via Tamaqua, have you? A. No.

Q. When was the line to Atlantic City opened as a through joint route? A. It was opened with one train each way on week days in 1900. This was increased in 1902 with two trains in each direction, and it has been added to from time to time, and now we have two trains in each direction daily, including Sundays, and an additional train from New York on Saturdays and from Atlantic City on Mondays.

Q. What, in general, has been the history of the development of the facilities furnished on those lines? Has it been a matter of improvement or retrogression? A. It has been an improvement since the start, both in the matter of equipment, and we have also established joint dining car service with the Reading from New York to Philadelphia and on New York to Harrisburg trains and Scranton and Philadelphia trains.

Q. What about the Atlantic City and New York? A. And Atlantic City trains we run them on Sundays and on Saturdays.

Q. So that you have built up the service and improved the facilities during that period? A. Yes, sir.

Cross examination.

By Mr. Coudert:

Q. I note from one of your statements here that there has been a great increase in traffic in the Central Railroad of New Jersey earnings from joint service with the Philadelphia and Reading via Bound Brook between 1901 and 1913. What do you attribute that to? A. Largely to increase in the number of trains operated.

Q. Do you attribute that to the fact that the Reading System owns the Jersey Central System? Is that it? A. No. The joint operation, operating together, we have improved the service, more than double the train service.

Q. Is it not so that there was perpetual agreement between the Philadelphia and Reading prior to that date for the running of through trains? A. Yes. That line was established in 1876.

Q. So that agreement existed independently of the purchase by the Reading System of the Jersey Central, did it not? A. Yes.

Q. Were there not other through routes that existed under perpetual agreements similar to that one? A. No, sir.

Q. None that you are aware of? A. No.

Charles Hansel, having been duly sworn, was examined as follows:—

By Mr. Reynolds:

Q. What is your profession? A. Consulting engineer and investigator.

Q. What was your principal training for that career? A. I began my experience on the frontier of Colorado as chain man and afterwards as assistant engineer in charge of the building of the first line into New Mexico, afterwards chief engineer of the Wabash in charge of all the lines east of St. Louis. Afterwards engineer for the State of Illinois, as consulting engineer for the State. Afterwards engaged in various engineering work.

Q. Were you engaged in the valuation of railroads for taxation purposes in any of the western States at any time in the past? A. Yes, sir; I was a member of the Board of Review, appointed by the State of Michigan in 1900, to pass upon the various debatable theories and questions attendant upon the valuation of railroads in that State for the purpose of taxation and for other purposes I presume, but essentially for taxation in that case.

Q. So that you have been in the employ of these western States for a considerable period? A. Yes. Off and on. I was also engaged by the State of Michigan for the valuation of the Duluth, South Shore and Atlantic Railway.

Q. In 1910 were you appointed as expert in charge to re-value the railroad and canal property in New Jersey under Chapter 307 of the session laws of that year? A. Yes, sir.

Q. Did you undertake, with an associate, the re-valuation of the railroads for the purposes of taxation under that Act? A. I did.

Q. How long were you engaged in that work? A. From April 12th, 1910, until October 1st, 1912, which included not only the valuation of the properties, but the assessment under the valuation, and afterwards, as expert for the State, in the appeals of the carriers from the assessments.

Q. Can you put into the record some description of the method and manner and the character as to thoroughness of that appraisal and valuation? Make it brief, but bring out the salient features of the work. A. Up to the time of the New Jersey valuation other States had attempted to make valuations by taking a part of their information from the records of the carriers, and for the first time in the history of valuation, the State of New Jersey, under my direction, consummated a complete field survey and calculation of all quantities independently of any information from the carriers, except as to their title in the lands and other structures. Some 110 engineers and assistants were employed in the field work and office work, and over half of the railroads in the State and over half of the canals

have been under that system accurately cross sectioned and fully measured as to quantities and as to price.

Q. So that was a very exhaustive examination to support a Tax Act on railroads, and went down to unit prices of the component parts of the railroads? Is that true? A. It did. But, in addition, we had to deal with the intangible, so called, or franchise value under sub-division 4 of the Tax Act of the State, which called for the remaining value of the property.

Q. In making your valuation under the Taxing Acts in New Jersey you valued what was known as the main stem, or as it is called in the statute, the first class property? Is that right? A. I did.

Q. And also the adjacent property used for railroad purposes and transportation purposes outside of the main stem, designated in the statute of New Jersey as second class property? A. I did.

Q. Is it a matter of coincidence that what was designated in those statutes as first and second class property or main stem and adjacent property coincides with the physical property used by a railroad in the transportation service to the public? A. It is generally coincident, and I thought the intent of the Act to include that property of the carriers devoted to the service of the public. All other property was classified as third class and assessed by the taxing community in which it was found.

Q. And classes one and two were assessed by the State? A. By the State.

Q. And also class four, the intangible value? A. Yes, sir. I might explain that the sub-division 4 is other values, including the franchise. The franchise is not set apart from other elements of value, as such.

Q. Having made that inventory and appraised in this manner, what was done with it? A. It was made the basis for taxation in the State of New Jersey. I filed that report with Governor Wilson.

Q. At my request, about a year and a half ago, communicating to you the request of then Commissioner Lane of the Interstate Commerce Commission, did you prepare an affi-

davit giving a summary of the values of physical elements of the Central Railroad of New Jersey system in New Jersey, which was filed in Docket 4914? A. I did.

Q. Is that a copy of it? (Copy shown witness.) A. This seems to be a copy of it. I am sure it is so far as I can compare without having my original figures before me. The total is the same.

Q. What is that total which you found as the value for that appraisal as the basis of taxation? A. I will have to qualify my answer by saying that the total in the affidavit is $82,122,886. All of the items composing that total, excepting that of land, are as I appraised them. The item of land is as assessed by the State, which differed in some respects on account of appeals and hearings and various other causes from the sum that I had returned as the valuation.

Q. That was the final assessment of the land? A. The final assessment of the land is as shown in my affidavit, and the assessment is higher in some cases, and my affidavit so states.

Q. In this $82,122,886, the value of the Jersey Central property in the State of New Jersey alone, is there anything included in any of what you have described as the fourth class property, including franchise? A. Nothing.

Q. That is all physical property? A. Physical.

Q. Is there included any lands held for future use but not now presently used for transportation purposes? A. Nothing. All such would appear in the third class property, which is not assessed by the State.

(The affidavit produced by the witness is as follows):—

"STATEMENT

of Value of Physical elements of Central Railroad of New Jersey System in New Jersey.

1. Land.	$18,765,956
2. Clearing and grubbing.	62,403
3. Graduation.	4,034,688
4. Tunnels.	

5. Bridges, retaining walls and culverts.....	6,235,711
6. Track and its appurtenances.....	8,664,8 :5
7. Fencing.....	58,794
8. Crossings, cattle guards, gates and signs...	123,031
9. Block signalling.....	299,358
10. Interlocking.....	375,915
11. Miscellaneous signals.....	12,621
12. Passenger and freight stations.....	1,799,955
13. Shop buildings and engine houses.....	1,238,814
14. Docks and piers.....	1,656,994
15. Telegraph and telephone lines.....	
16. Turn-tables, transfer tables, track scales and track cranes.....	209,847
17. Pintsch Gas Plants.....	44,940
18. Electric Light Plants.....	
19. Grain elevators.....	
20. Miscellaneous structures.....	986,347
21. Shop machinery, machine tools and appurtenances.....	526,885
22. Locomotives.....	6,413,125
23. Passenger train equipment.....	4,023,050
24. Freight train equipment.....	21,206,988
25. Miscellaneous road equipment.....	303,397
26. Floating or marine equipment.....	4,543,000
27. Value of materials and supplies in New Jersey.....	536,242
28. Total value of all items as above.....	$82,122,886

STATE OF NEW JERSEY, }
COUNTY OF UNION. } *ss.*

Charles Hansel, being duly sworn according to law, on his oath says that he was appointed Expert in Charge to re-value railroad and canal property in New Jersey under Chapter 307, Laws, session of 1910, of the New Jersey

Legislature, approved April 12th, 1910; and that pursuant to said appointment he entered upon his duties and valued the properties of the Central Railroad Company of New Jersey, among others; that the attached schedules with the exception of item one, the valuation of the land, were valuations so made by him and returned to the State Board of Assessors as a basis for taxation by that body; that as to item one, the value of land, as stated in the attached statement, is the assessment as made by the State Board of Assessors, and appearing in the books and records of that body, to which books and records he has had access by reason of his official position; that the valuations so made by him were compiled under his direction and supervision; and the facts, matters and things contained therein are true to the best of his knowledge and belief.

CHARLES HENSEL.

Sworn to and subscribed before me this 7th day of February, 1913.

RAYMOND W. OAKLEY,
Notary Public, New Jersey."

[SEAL]

Q. Have you at my request pursued a similar course in making an inventory and appraisal of the properties of the various railway companies going to make up what is popularly known as the Reading System in the service of the public? A. I have prepared a partial inventory for justification of the road account of the Philadelphia and Reading Railway System.

Q. In that inventory did you take into consideration or attempt to inventory the equipment used in the operation of the so-called Reading System of railways? A. No, sir.

Q. What manner or method did you adopt in the making of this inventory of the physical property of the Reading System? A. I had the service of a special train, and was accompanied by the chief engineer of the Reading System,

Mr. Hunter, a stenographer, and my own assistants, and by these means we first observed and commented upon the various features of the physical property throughout the entire system, excepting such portions of the system as I had examined in New Jersey during the time I was employed by the State. I did not at this time go over the Atlantic City nor the Port Reading, as I was familiar with that territory.

Q. Or the line between the Delaware River and Bound Brook? A. I excluded that from the special examination, as I frequently go over it, and always try to increase my information as to the general characteristics of the property. After having made this survey in company at the same time with the several division superintendents and assistant engineers, and after having made a full description of the property as expressed in the report, I then, in association with the chief engineers' staff, all of whom were at my disposal, examined the records of the Company as to cost of construction of each of the several items included in the Interstate Commerce Commission's classification of road and equipment account. I have included all of the supporting data for the compilation of the totals in a separate volume, which is entitled "Supporting Data," in which will be found a description of each building, structure, land, track, and such other elements of physical value as have been included in the report. I do not contend that all of the items of property are included, because I had insufficient time to make an actual field survey, but I have completed this report in a manner similar to that pursued in the various states, that is, I have, so far as possible, taken the actual costs as shown by the records of the carrier, and, if you may say, all carriers in this connection, since there are a number of corporations involved in the assumed title, and where we had no record of the cost, I then took quantities and applied a price. For instance, for excavation, embankment, all the elements of gradation, and the elements of track, which are easily definable and analyzed, as set forth in this supporting data.

Q. Take the element of land, for example, what has been your method of valuing the land? A. I have included the land at the price which I considered to be the normal price of similar neighboring lands, without considering the element of cost of acquisition.

Q. Have you put into that value any adventitious value due to the user of land for railroad purposes? A. I have distinctly stated in the report that no such added sum is to be found in the report, and that only the naked or basic price—I will not call it value—has been attached to each of the several parcels of land. I illustrate in the report, however, that in the actual acquisition of some of the land of which I found records for, the cost of acquisition was several times the price which I felt was the normal value of the adjacent neighboring land for any other purpose than a railroad.

Q. Have you put into these land values any element for plottage or continuity? A. The continuity of the right of way?

Q. Yes. A. No.

Q. In the preparation of that report had you any information in advance of your arrival at your conclusion as to the value at which these properties were carried upon the books of the corporation? A. No; only that I had seen incidentally a so-called twenty-six year statement of what I found was to include none of the equipment, and I was unadvised as to precisely the territory this so-called twenty-six year statement covered.

Q. Is it true then that your conclusions as to this inventory and value were reached independently of information as to what the same property was carried at on the books of the companies owning these properties? A. It is true. And further, my instructions were simple, to the effect that I was to include the property in the service of the railroad for the public, and that was all the instructions that I received.

Q. Please file as part of your testimony your summary of partial inventory as appears on the first page of the report you have made.

The witness produced the following summary:—

"Philadelphia and Reading Railway System Summary of Partial Inventory for Justification of 'Road Account' as of June 30th, 1913.

(1) Grading	$29,613,090.00
(2) Bridges	28,250,476.00
(3) Buildings	11,481,731.00
(4) Signals and Interlocking	2,581,152.00
(5) Water stations	642,023.00
(6) Track	26,536,865.00
(7) Other construction details	13,991,400.00
(8) Machinery and tools, materia' and supplies, frogs and switches,	10,011,060.00
(9) Land	48,828,459.00
Partial inventory of physical elements	**$171,936,256.00**
(10) Engineering— 5% on items 1 to 8, bc ' inclusive	6,155,390.00
(11) Contingencies— 5% on items 1 to 8, both inclusive; 5% on item 10	6,463,159.00
(12) Legal expenses— 1% on items 1 to 8 both inclusive; 2% on item 9	2,207,647.00
(13) General expenses— 1% on items 1 to 8, both inclusive; 3% on item 9	2,695,932.00
(14) Interest and commissions— 10% on items 1 to 13, both inclusive	18,945,838.00
Total	$208,404,222.00

(Signed) CHARLES HANSEL.
Consulting Engineer and Investigator,
43 Exchange Place, New York."

At one o'clock a recess was taken until two o'clock P. M.

Q. Are you generally familiar with the topographical and geographical nature of the country through which the Reading System serves the anthracite coal regions? A. I am.

Q. Has it been a part of your professional work in recent years to make examinations of existing railroads for banking houses and those financing railroad ventures? A. I cannot say that I have made any such reports in recent years for banking houses. But, I have had to do for State Governments and bankers with the various problems of railroad construction and operation.

Q. That is, the field work that you have been doing has been to investigate for bankers routes for the construction of railroads, and then advising whether it would be a commercial proposition to build such a railroad? A. Yes. I have had such problems for bankers.

Q. Take the anthracite situation in the Schuylkill Region served by the Philadelphia and Reading system, would it be a commercially practicable and feasible venture to build a new railroad into that region from points of connection with the Jersey Central in the valley of the Lehigh River? A. I should say not.

Q. Why not? A. Because of the cost, which would be excessive on account of the topography, and on account of the need of separating the crossings of the new line from the existing lines. And because it would not be practicable without an entire change of the present tipples at the collieries for a new line to serve these collieries without crossing the existing lines at grade.

Q. Is your answer based at all upon the assumption that the existing railway there, the Philadelphia and Reading Railway, is in a position of stock ownership of the coal company which owns these collieries of which you speak in large numbers? A. No; I should say regardless of ownership of the collieries I would think it would be uneconomic to construct into a territory that was adequately served.

Q. What bearing has that qualifying phrase in your judgment? A. The qualifying phrase that you introduced as to ownership?

Q. The qualifying phrase that you introduced, that it was adequately served. A. If the collieries had not service, it would be so considered by those who were considering the financing of the new proposition. If, however, they had to divide with an established transportation agency, they could hardly hope to more than get some portion of the product, and consequently, the cost of operation would be in excess of the senior company which was there under more favorable circumstances, having had the right of way unoccupied at the time it built.

Q. Would it or not follow as a fact that the junior company would be involved in larger costs for initial construction than the company already there? A. It certainly would.

Q. Would it follow or not as an engineering proposition that the junior company would have as good a line as to gradient and alignment as the company already there? A. I think not.

Q. What would the consequences of that altered condition be in the operating cost of the junior company? A. It would increase it materially.

(Government counsel make a general objection to the testimony of this witness, and move to strike it from the record, on the ground that it is wholly incompetent, immaterial and irrelevant to any and all of the issues in this case.)

Cross examination.

By MR. COUDERT:

Q. How long were you in making the valuation in regard to the Reading Railroad as to which you have testified? A. I commenced the study on the 17th of January and finished it about the 1st of March.

ROBERT H. LARGE, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your official connection, and with what railroad? A. I am the general coal freight agent of the Pennsylvania Railroad lines east of Pittsburgh, comprising the Pennsylvania Railroad, the Northern Central Railroad,

the West Jersey and Seashore and the P. B. and W. Railroad.

Q. In that position have you got general charge of the rate making and traffic policy of the Pennsylvania Railroad as respects coal? A. I have charge of the coal and coke business of the Pennsylvania system east.

Q. How long have you been in charge? A. I have been general coal freight agent since June, 1910, and prior to that coal freight agent or practically assistant general coal freight agent since February, 1905.

Q. Has your business experience been that of traffic expert ever since you have been in the business? A. I have been in the traffic department in various capacities of the Pennsylvania Railroad Company for approximately eighteen years.

Q. To what extent is the Pennsylvania Railroad a transporter of bituminous coal? A. The bituminous tonnage of the Pennsylvania lines east aggregate about forty-five million tons per year. It is the largest transporter of bituminous coal in the United States, and, I think, in the world.

Q. Can you state about what proportion of your total tonnage on your lines east is made up of bituminous coal? A. Of our total freight tonnage, about thirty-five per cent.

Q. Are the communities tributary to the Pennsylvania system large consumers of bituminous coal? A. They are.

Q. Does the Pennsylvania Railroad own or control the coal mining operations in the bituminous field? A. It does not. The Pennsylvania Railroad Company owns no mining operations. The Manor Real Estate Company, of which the Pennsylvania Railroad Company owns I think all the stock, owns a comparatively limited area of undeveloped coal land.

Q. But is not a miner? A. It is not a miner of bituminous coal.

Q. So that as to this vast volume of bituminous traffic, the relation of the Pennsylvania Railroad is simply that of a transporter? A. Absolutely.

Q. What is, and has for many years been the avowed traffic policy of the Pennsylvania Railroad as respects the making of joint rates with other carriers originating bi-

tuminous coal bringing that coal upon the system of the Pennsylvania Railroad? A. With some minor exceptions, our policy has been for years, and is now, that we do not establish joint rates with any other railroad companies that are large producers and transporters of bituminous coal, by reason of the fact, first, that there is more bituminous coal produced on the line of our own road than the market will take, and, secondly, that there are all grades of bituminous coal produced in the various districts reached by the line direct.

Q. Have you reached that definite and avowed policy in respect to that matter purely as a transportation interest, or in the interest of the shippers on your lines? A. Primarily as a transportation matter—in the interest of the transportation. Secondly, of couse, in the interest of the miners and the producers on the road.

Q. What economic foundation is there for such a policy from the standpoint of the transporter? A. It has always been our policy, and we believe it to be the proper economic policy, to preserve the total transportation to our own line, which, of course, materially decreases the cost of operation.

Q. Does the public suffer by that in any way so long as the amount of the commodity produced is sufficient to supply the consuming markets tributary to your lines? A. The public not only does not suffer by it, but, I should say, that indirectly the public benefits by it.

Q. In what way? A. In the saving to the railroad company and the indirect benefit to the public by increased facilities and better service and operation.

Q. Has your policy been a notorious one, well known to the State and Federal commissions? A. I think so. It is not common by any means with us—it is not peculiar to the Pennsylvania Railroad Company.

Q. From your knowledge of other bituminous lines, can you say whether or not it is a general policy, under similar circumstances, of other bituminous lines? A. I should say, generally speaking, that throughout the eastern section of the country where bituminous carrying roads reach a terri-

tory that is producing more coal than there is market for on their lines, that it is the general policy.

Q. Has that been a normal, natural growth of traffic policy with your company and your neighboring bituminous carriers during the past twenty years up to the present? A. Yes, sir; I should say it had been the policy for a greater period than that

Q. How long back does it date? A. I should say it dates back to the commencement of the large development of the bituminous coal fields of Pennsylvania. With the southern lines it practically dates from the time that they were built.

Q. So far then as the Pennsylvania Railroad is concerned, the condemnation of any such practice as that remains for the future? A. That is correct.

(Government's counsel moved to strike out the testimony of the witness Robert H. Large, on the ground that it is irrelevant, incompetent and immaterial, and has no bearing whatever upon the issues in this case.)

Cross examination.

By MR. COUDERT:

Q. Do I understand you to say that the Pennsylvania Railroad refused joint rates to other roads on anthracite coal? A. I was speaking with respect entirely to bituminous coal.

Q. You say they do refuse? A. Yes, generally speaking.

Q. As a constant policy, in order that they may retain all the traffic on their own line? A. Yes, and by reason of the fact that there is more coal produced on our lines than will meet the market requirements, and we are compelled, in order to increase and keep up our tonnage, to seek markets.

Q. Are you aware of the fact that in the event of a refusal on the part of your road to make such series of joint rates, the Interstate Commerce Commission may compel it? A. That is correct; but, they have never so done.

Q. But you are perfectly aware of the fact that it might be done at any time by law? A. Oh, yes.

Q. Do you say it has never been done in the case of the

Pennsylvania Railroad? A. I have been intimately connected with the coal department for ten years, and I do not know of a case in so far as coal traffic is concerned, with the single exception, I think of the Enterprise Fuel Company case, where it was done, and, in that instance, it was limited to a destination which we could not reach, and the rate established was higher than our rate.

Q. Might not it have been done in other cases other than coal? A. Oh, yes, I think so.

Q. You think that a carrier should be permitted to retain to itself the coal market at points on its own line for the benefit of producing points on its lines, I take it? A. Primarily for the benefit of the carrier.

Q. I take it that your idea is that the policy of the Pennsylvania and the other roads has been that for the benefit of the carrier it should be permitted to retain to itself the coal markets at points on its own line? A. Unquestionably and, I think the public benefits from that.

Q. And that has been the policy of your road? A. That is correct, in so far as bituminous coal is concerned.

Q. Are you aware that that is diametrically opposed to the policy of the law as contradistinguished from the policy of your road? A. I am not a lawyer.

Q. Therefore, you are not aware that the effect of that policy is opposed to the decisions of the Interstate Commerce Commission? I ask you whether you are aware of that fact? A. I am not aware of that fact.

Q. Is the policy of the Pennsylvania Railroad the same in regard to anthracite as it is as to bituminous coal? A. No; it is directly the opposite, because the situation is diametrically different.

Q. You might explain that. A. In so far as anthracite traffic is concerned, there is not sufficient production of anthracite coal on our lines to anything like meet the requirements of the markets on our lines, and we are obliged to go to our other connections to seek tonnage, and are very glad to establish joint rates on that account. In fact, the production on our system is less than fifty per cent. of the consumption on our system.

Q. Would you say that in that case the establishment of joint rates is detrimental to the public? A. Oh, no.

Q. That is also highly beneficial to the public, is it not? A. It is equally advantageous to the public and equally advantageous to the railroad company.

Q. So that whether the railroad company establishes joint rates, or whether it refuses to establish joint rates, according to their policy, in either event, you are satisfied is to the benefit of the public? A. No; not at all. That depends entirely on the conditions.

Q. In one case you have said it would be beneficial to the public, and then very beneficial to the public when it is entirely the opposite? A. The conditions are different, entirely the reverse, the conditions in regard to the coal being the commercial conditions and the producing conditions, and the transportaton conditions are entirely the reverse in the two cases.

Mr. Reynolds offered in evidence statement from the books of the company showing dividends paid by the Philadelphia and Reading Railway Company to the Reading Company as follows:—

DIVIDENDS PAID BY PHILADELPHIA & READING RAILWAY COMPANY TO READING COMPANY.

Year.	Rate, Per Cent.	Amount.
June 30th, 1904	12	$2,400,000.00
" 1905	20	4,000,000.00
" 1906	30	6,000,000.00
" 1907	30	6,000,000.00
" 1908	30	6,000,000.00
" 1909	25	5,000,000.00
" 1910	25	5,000,000.00
" 1911	25	5,000,000.00
" 1912	15	6,372,255.00
" 1913	15	6,372,255.00
To January 31st, 1914	15	6,372,255.00
		$58,516,765.00

Mr. Reynolds also offered in evidence statement bringing down to date compilations which have appeared in the record of the old Reading case, showing the tons carried and the per cent. of the total tons carried by each of the so-called anthracite railroads from 1896 to 1913 inclusive. This statement is compiled from the monthly and annual reports of the Bureau of Anthracite Coal Statistics, which are sent to all the railroads and are available for the purposes of compilation.

	1896		1897		
	Tons.	Per Cent.	Tons.	Per Cent.	
P. & R. R. W.	9,019,535	20.89	8,395,411	20.16	8
L. V. R. R.	6,749,128	15.63	6,425,227	15.43	6
C. R. R. of N. J.	4,999,003	11.58	4,730,860	11.36	4
D. L. & W. R. R.	5,627,533	13.03	5,690,684	13.67	5
D. & H. Co.	4,152,273	9.62	3,921,665	9.42	3
Pennsylvania R. R.	4,752,120	11.01	4,764,332	11.44	4
Erie R. R.	3,447,234	7.98	3,448,455	8.28	3
N. Y. O. & W. Ry.	1,321,895	3.06	1,323,868	3.18	1
N. Y. S. & W. R. R.	1,410,080	3.27	1,314,433	3.16	1
D. S. & S. R. R.	1,698,684	3.93	1,622,929	3.90	1
	43,177,485	100	41,637,864	100	41

• Tonnage included in Lehigh Valley Railroad.
† Tonnage included in Erie Railroad.
First shipment over L. & N. E. R. R. made in July, 1912.
Shipments for year 1912: 295,259 tons.
Shipments for year 1913: 701,419 tons.

SHIPMENTS OF ANTHRACITE COAL VIA THE VARIOUS COAL CARRYING R

	1898		1899		1900		1901		1902		1903		1904		
er Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	To
20.16	8,219,814	19.62	9,683,503	20.32	9,338,516	20.70	10,971,007	20.48	5,909,401	18.94	11,490,963	19.36	11,399,622	19.83	12,5
15.43	6,885,577	16.43	7,588,932	15.92	6,909,442	15.32	8,310,343	15.51	4,631,535	14.84	9,737,160	16.40	9,611,426	16.72	10,0
11.36	4,626,386	11.04	5,392,550	11.31	5,309,856	11.77	6,160,037	11.50	3,629,986	11.63	7,404,612	12.47	7,201,276	12.53	7,9
13.67	5,795,540	13.83	6,372,402	13.37	6,013,849	13.33	7,531,735	14.06	5,152,498	16.51	9,575,551	16.13	9,333,069	16.23	9,5
9.42	3,891,246	9.29	4,132,459	8.67	3,973,859	8.81	5,007,622	9.35	3,090,604	9.91	5,927,283	9.99	5,276,797	9.18	5,6
11.44	4,801,349	11.46	5,158,101	10.82	5,169,947	11.46	5,647,125	10.54	2,610,234	8.37	4,555,459	7.67	4,765,953	8.29	4,8
8.28	3,451,054	8.24	4,296,937	9.01	5,165,070	11.45	5,841,593	10.91	3,814,150	12.22	6,343,852	10.68	5,711,173	9.93	6,2
3.18	1,371,592	3.27	1,891,478	3.97	1,658,457	3.68	2,508,277	4.68	1,627,478	5.22	2,693,462	4.54	2,646,730	4.60	2,8
3.16	1,301,763	3.11	1,454,375	3.05	†		†		†		†		†		†
3.90	1,555,430	3.71	1,694,467	3.56	1,568,488	3.48	1,590,862	2.97	735,004	2.36	1,634,489	2.76	1,546,476	2.69	1,6
100	41,899,751	100	47,665,204	100	45,107,484	100	53,568,601	100	31,200,890	100	59,362,831	100	57,492,522	100	61,4

2.

RRYING RAILROADS. YEARS 1896 TO 1913 INCLUSIVE.

	1905		1906		1907		1908		1909		1910		1911		
Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.
9.83	12,574,502	20.48	11,258,295	20.21	14,018,795	20.89	12,578,883	19.45	11,920,757	19.24	12,445,733	19.17	13,265,758	18.96	12,852,38
6.72	10,072,120	16.40	9,971,699	17.90	11,532,255	17.18	10,772,040	16.66	10,296,627	16.61	11,195,765	17.25	12,603,000	18.02	11,791,60
2.53	7,983,274	13.00	6,983,217	12.54	8,714,113	12.99	8,495,425	13.14	7,938,370	12.81	8,519,135	13.13	9,218,802	13.18	8,342,47
6.23	9,554,046	15.56	9,201,875	16.52	10,237,419	15.25	10,088,697	15.60	9,531,695	15.38	9,589,076	14.77	9,869,620	14.11	9,065,62
9.18	5,640,528	9.19	5,346,695	9.60	6,562,768	9.78	6,461,666	9.99	6,136,946	9.90	6,578,356	10.14	7,206,731	10.30	6,361,23
8.29	4,890,635	7.96	4,856,004	8.72	6,203,271	9.24	6,019,457	9.31	5,966,543	9.63	6,250,976	9.63	6,494,733	9.28	5,548,19
9.93	6,225,622	10.14	5,636,537	10.12	7,151,683	10.66	7,450,175	11.52	7,461,121	12.04	7,554,198	11.64	8,800,179	12.58	7,435,67
4.60	2,864,096	4.66	2,444,273	4.39	2,689,089	4.01	2,798,671	4.33	2,717,826	4.39	2,772,547	4.27	2,495,476	3.57	2,213,38
2.69	† 1,605,378	2.61	†		†		†		†		†		†		†
0	61,410,201	100	55,698,595	100	67,109,393	100	64,665,014	100	61,969,885	100	64,905,786	100	69,954,299	100	63,610,57

D 1913 INCLUSIVE.

06	1907		1908		1909		1910		1911		1912		1913	
Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.
20.21	14,018,795	20.89	12,578,883	19.45	11,920,757	19.24	12,445,733	19.17	13,265,758	18.96	12,852,386	20.20	12,914,887	18.70
17.90	11,532,255	17.18	10,772,040	16.66	10,296,627	16.61	11,195,765	17.25	12,603,000	18.02	11,791,601	18.54	13,011,370	18.84
12.54	8,714,113	12.99	8,495,425	13.14	7,938,370	12.81	8,519,135	13.13	9,218,802	13.18	8,342,477	13.12	9,092,433	13.16
16.52	10,237,419	15.25	10,088,697	15.60	9,531,695	15.38	9,589,076	14.77	9,869,620	14.11	9,065,622	14.25	9,903,541	14.34
9.60	6,562,768	9.78	6,461,666	9.99	6,136,946	9.90	6,578,356	10.14	7,206,731	10.30	6,361,238	10.00	7,094,258	10.27
8.72	6,203,271	9.24	6,019,457	9.31	5,966,543	9.63	6,250,976	9.63	6,494,733	9.28	5,548,193	8.72	6,351,756	9.20
10.12	7,151,683	10.66	7,450,175	11.52	7,461,121	12.04	7,554,198	11.64	8,800,179	12.58	7,435,679	11.69	8,192,352	11.86
4.39	2,689,089	4.01	2,798,671	4.33	2,717,826	4.39	2,772,547	4.27	2,495,476	3.57	2,213,382	3.48	2,509,031	3.63
100	67,109,393	100	64,665,014	100	61,969,885	100	64,905,786	100	69,954,299	100	63,610,578	100	69,069,628	100

Pursuant to the right reserved for the purpose, counsel for the Government now re-offer the illustrated map, in which a number of corrections have been made.

Map marked "Government Exhibit No. 1."

Defendants object to the receipt of this map as inaccurately delineating the Central Railroad of New Jersey thereon.

Adjourned until Friday, April 3d, 1914, at 11 o'clock A. M.

PHILADELPHIA, Friday, April 3d, 1914.
11 o'clock A. M.

Present.—The Examiner. Messrs. Coudert, Kingsbury and Gordon, Special Assistants to the United States Attorney General, for the Government. Messrs. Reynolds, Heebner and Drinker, representing defendants.

EDWIN F. SMITH, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your occupation? A. I am civil engineer by profession.

Q. What positions have you in the past occupied with the Schuylkill Navigation Company? A. I became connected with the Schuylkill Navigation Company on the 1st of October, 1862, and was assistant engineer in charge of maintenance of the works until I think 1872, when I was made resident engineer, in charge of the works. Later I was appointed chief engineer, and later general manager, and continued in charge of the Schuylkill Navigation works until the 1st of October, 1911, when I retired from the service.

Q. Who was the chief engineer of the canal at the time you entered the employment of the company? A. My father, James F. Smith, was chief engineer, and had been on the Schuylkill Navigation since 1843.

MR. REYNOLDS:—I read in evidence a part of the Act incorporating the Schuylkill Navigation Company, being "An Act to authorize the Governor to incorporate a company to make a lock navigation on the river Schuylkill." Pamphlet Laws of Pennsylvania of 1815 beginning at page 72.

It is understood that either side may refer to this Act and spread so much on the record as they desire.

At the moment I simply desire to read into the record the substance of section 16, which is as follows: "And be it further enacted by the authority aforesaid, That as soon as the said navigation is executed in a masterly workmanlike manner, according to the true intent and meaning of this act, then the Governor shall by license under his hand and the less seal of this Commonwealth, permit the said president, managers and company, to demand and receive of and from the persons having the charge of any boat, ark or other vessel passing through any lock erected on said river or canal, twelve and a half cents at each lock below the borough of Reading, and eight cents above that borough, upon each and every ton of the ascertained burden of such vessel: Provided, That if at the expiration of two years after the said work shall be completed, the tolls, together with the interest of the surplus of any money arising from the sale of water power or the rents and profits thereof, should enable the company, after paying all repairs and other necessary expenses, to divide more than nine per centum per annum on the capital stock expended, then and in such case the tolls shall be so reduced that the dividends shall not exceed nine per cent. and shall so continue for five years; and if at the expiration of that time, shall exceed fifteen per cent. they shall be so reduced as not to exceed fifteen per cent. and shall at that period be so regulated from time to time as not to exceed fifteen per cent. per annum; and if at any time after the expiration of two years from the completion of said work, the net profits aforesaid, shall not amount to nine per cent. upon the money expended, it shall be lawful to raise the said tolls so as to divide nine per cent."

Also section 26, as follows: "And be it further enacted by the authority aforesaid, That if the said corporation

shall, at any time hereafter, misuse or abuse any of the chartered privileges hereby granted, the legislature may, at any time thereafter, resume all and singular the rights, privileges and franchises hereby granted to the said company."

Q. Referring to section 16 giving the company the right to take tolls from each ton's burden of every boat at the rate of twelve and a half cents at each lock below Reading, how many locks were there below Reading in the canal? A. There were twenty-four locks below Reading.

Q. Referring again to the same section, where it is provided that they are to be able to take eight cents toll for each ton's burden of every boat at each lock above Reading, how many locks were there above Reading? A. Forty-eight locks above Reading. There are seventy-two locks in all from the head of navigation to Fairmount, Philadelphia.

Q. What did that make the authorized toll per ton burden of the vessel? A. That depends entirely upon whether they mean by the burden of the vessel its calculated tonnage or its actual loading tonnage. On the calculated tonnage it would make about $6.84. Its actual tonnage, the cubic contents of the vessel in displacement, the same as an ocean steamer, like the Imperator, is measured, and that is the actual tonnage that the vessel carries.

Q. In either event, taking the lowest figure it makes your toll about four dollars a ton, does it not? A. In what year was that Act?

Q. I am referring to when the Act was passed, in 1815. A. Those were much smaller boats than are used now for navigating the Schuylkill, and my recollection in reading about them is that they were about sixty tons capacity at that time.

Q. At what rate per ton of coal would that put the freight? At twelve and a half cents for the twenty-four locks below Reading and at eight cents for each lock above Reading, forty-eight in number for the ton burden of each boat? A. If this is taken at eight cents a ton for each lock above Reading, and twelve and a half cents a ton for each

lock below Reading, it would make an aggregate of $6.84 a ton.

Q. Was the canal simply a water highway maintained and operated by the Navigation Company? A. As a water highway alone?

Q. Yes. A. No; it was not. It was chartered as a public highway of the State. As a canal and river navigation, called the Schuylkill Navigation for the passage of boats, and to be used by the public on the payment of toll. And it was also distinctly chartered to sell water power.

Q. So far as its canal use was concerned, it was and is possible, is it not, for anybody who wants to operate a canal boat of his own, to go on the canal, under his right to demand the use of it upon the payment of the tolls? A. Yes, sir. It has always been so, and is so now. Any one approaching a lock with a boat, on the payment of toll, can pass through without question, with any cargo that he may choose to load in his boat.

Q. At the present time all that any independent coal dealer would have to do would be to load his coal on a canal boat and bring it down through the canal if he thought well to do so? A. That is all. He can do so.

Q. Is this paper which I show you the toll tariff of the Schuylkill Navigation Company? (Paper shown witness.) A. It is. This paper contains the rates of tolls to be paid on anthracite coal for the three various sizes, prepared sizes, pea coal and smaller sizes. These rates on coal include steam towing by tugs between the outlet lock at Fairmount in tidewater, and any service on the Schuylkill front down to the mouth of the Schuylkill, but not into the Delaware River.

Q. It also includes the service of dumping the coal into the canal boat at the point of origin, does it not? A. It does. It includes the payment of the railroad tolls from the mines to the canal landings at Port Clinton, where the coal is put into the boat.

Q. That is, if that independent shipper owning his

canal boat wanted to use this canal for the transportation of coal to Philadelphia, he would pay the Schuylkill Navigation Company $1.05, and the Schuylkill Navigation Company would pay the cost of transporting that coal from any colliery in the Shamokin, Mahanoy, Schuylkill, Lorberry and Lykens Valley districts down to Port Clinton, and there dump the coal into that man's canal boat for him all for $1.05? A. No; he would not pay the charge of dumping the coal into the canal boat. He would deliver the coal on the siding at Port Clinton. The Navigation Company would assume the expense of moving it from the railroad siding to the canal landings, weigh it on its own scale, and dump it into the boat.

Q. That was what my question stated; that the Navigation Company pays the railroad for getting the coal into the canal boat? A. No; the Navigation Company does not pay the railroad the entire cost of bringing it from the mines and putting it into the boat. It pays the cost of bringing it from the mines to the railroad sidings nearby Port Clinton landings.

Q. This says that the above rates include the loading and trimming. What does that phrase mean? If it does not mean that they also assume the cost of loading the coal into the canal boat, what does it mean? A. The Navigation Company assumes the cost of loading and trimming.

Q. That is what I say. A. I did not understand you. The Navigation Company assumes the cost of loading and trimming.

Q. The Navigation Company then assumes the cost of transporting the coal from the mines to Port Clinton and then moving it over and weighing it and dumping it into the canal boat? A. Yes, sir.

Q. The Navigation Company does that? A. Yes, sir.

Q. So that the shipper has only to pay $1.05 for getting that coal from any of the mines in the regions I have named to Philadelphia in his own boat, is that right? A. That is right.

Mr. Reynolds offered in evidence tariff referred to by the witness as follows:—

"OFFICE OF THE

"SCHUYLKILL NAVIGATION COMPANY,

"PHILADELPHIA, PA., April 1, 1912.

"Until further notice the following *Rates of Toll*, in cents per ton (2240 pounds), will be charged on *Anthracite Coal*, from Collieries in Shamokin, Mahanoy, Schuylkill, Lorberry and Lykens Valley Districts, in boats using the Schuylkill Navigation, from Port Clinton:

TO.	FROM COLLIERIES IN SHAMOKIN, MAHANOY, SCHUYLKILL, LORBERRY AND LYKENS VALLEY DISTRICTS.		
	Prepared Sizes.	Pea Coal.	Smaller Sizes.
Hamburg	75	60	55
Shoemakersville	83	68	53
Mohrsville	88	73	53
Leesport	91	71	51
Reading	94	74	54
Birdsboro	102	72	52
Port Union and Unionville	101	86	66
Pottstown and Parkers Landing	104	84	64
Spring City	106	86	71
Black Rock Dam	106	86	71
Manayunk and Falls	108	78	63
Philadelphia-Schuylkill Front	105	75	60

"Steam Towing.—The above rates include towing between Fairmount Locks and wharves on Schuylkill Front.

"The above rates include Loading and Trimming, but are exclusive of the cost of unloading.

"If coal is shipped in leased boats, a proportion of the freight rate for boat installment will be collected from the shipper with the tolls, and noted on Captain's Bill of Lading as so much freight advanced.

"No deduction will be made from these rates to free boats, nor will any premium be allowed for prompt unloading.

"W. B. NISSLY, Superintendent.

"A. A. KIRLIN, Collector."

By Mr. Coudert:

Q. Do I understand you to say that that charge includes the amount paid by the Navigation Company to the Railroad Company for bringing the coal from thirty odd miles from the mines to Port Clinton? A. Yes, to Port Clinton.

By Mr. Reynolds:

Q. Any distance? It would be over thirty miles in some instances. Whatever distance it happens to be? A. Yes, sir.

Q. The tariff condition is to be read as indicating for $1.05 any independent operator can have his coal gathered at any of the collieries in the Shamokin, Mahanoy, Schuylkill, Lorberry, Lykens Valley Districts, brought to the canal and dumped in his boat, and may use the canal to tow his coal to destination at Philadelphia, all for $1.05? A. That is right; yes, sir.

Mr. Reynolds:—At this point I desire to read into the record Statute No. 48 of the Session Laws of 1870, of the Commonwealth of Pennsylvania, being entitled "A supplement to an act, entitled 'An Act relating to railroad and canal companies' approved April eleventh, one thousand eight hundred and sixty-four," as follows:—

"Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That it shall be lawful for any canal or navigation company, incorporated by this commonwealth, to purchase and hold the stock and bonds, and to lease the road and property of, or become consolidated and merged with, any railroad company so incorporated, and for any such railroad company to purchase and hold the stock and bonds, and to lease the canal, navigation and property of, or become consolidated and merged with any such canal or navigation Company, in the same manner as such purchases, leases, consolidation and merger are now allowed by law by and between railroad companies; and all the provisions of existing acts relative to such purchases, leases, consolidation and merger by and

between railroad companies are, whenever applicable, hereby extended so as to embrace the purchases, leases, consolidation and merger hereby authorized.

BUTLER B. STRANG,
Speaker of the House of Representatives.
CHARLES H. STINSON,
Speaker of the Senate.

Approved—The fourteenth day of April, Anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY."

MR. REYNOLDS:—I desire to offer in evidence the lease dated the twelfth day of July, A. D. 1870, by and between the President, Managers and Company of the Schuylkill Navigation Company of the first part, and the Philadelphia and Reading Railroad Company of the second part, under which the canal property was leased by the former company to the latter. I will not put in the entire lease, because much of it is irrelevant. It is understood that either side may quote at length from the lease if they desire. All I wish to put in is the statement that the lease was made at that time, and is the lease under which the canal was made over to the Philadelphia and Reading Railroad, and I wish to read the following from the lease (page 2, sub-paragraph 2). "And the parties of the first part (being the Schuylkill Navigation Company) do hereby grant, bargain and sell, assign, transfer and set-over unto the parties of the second part, their successors and assigns, all the estate, real, personal and mixed of the parties of the first part not included in the aforesaid demise, of whatever nature or kind the same may be, and whether the same may be held in possession, remainder or reversion, including thereunder all the lands with the buildings, structures, and improvements thereon erected, water rents, ground rents, tenements and hereditaments of the parties of the first part not included in the above demise. * * * To have and to hold the premises thus granted, bargained, sold, assigned,, trans-

ferred and set over unto the said parties of the second part, their successors and assigns, to and for their only proper use and behoof forever." Without reading at length, I wish to indicate on the record that the seventh covenant of the lease is a covenant of further assurance to give further conveyance to effectuate that conveyance. Then as respects the lease, the covenants or agreement, I wish to read the proviso or clause first on page 3, being as follows: "Provided, however, that nothing herein contained shall require the parties of the second part to keep up or maintain any part of the demised premises situated north of the division of the works of the parties of the first part known as the Hamburg canal, if in the opinion of the parties of the second part the expense of maintaining the same in repair would be greater than the revenue therefrom would justify, and, if the parties of the second part may otherwise be legally authorized to omit such maintenance and repair. And the parties of the second part are hereby expressly authorized and empowered (if otherwise legally entitled so to do) to discontinue the use for canal navigation or water power purposes of any part of the demised premises situated north of said Hamburg Canal, if in their opinion the productive value of the other demised premises would be greater after such discontinuance than before; and the parties of the second part are further authorized and empowered either to retain for the whole or any part of the said term of nine hundred and ninety-nine years such part of the premises, the use of which for any or all of the purposes aforesaid shall then have been discontinued, and to appropriate the same to such uses as they may think fit, or at their option to sell the same or any part thereof for any such price or prices and upon such terms and conditions as they may deem expedient, and to execute and deliver to the purchaser or purchasers such deed, assurance or other instrument of writing either on behalf of the parties of the first part or parties of the second part or both as may reasonably be required to grant and convey to the purchaser or purchasers all the estate, right, title and interest, claim property and demand of either or both of the parties hereto in the prem-

ises, free and clear from all liability on the part of the purchaser or purchasers to see to the application of the purchase money." The seventh clause from which I read refers at its conclusion to the parcels of real estate mentioned in the *habendum* clause in the beginning as being described in the schedule hereunto annexed, marked A.

Q. Are you familiar with the real estate of the Navigation Company which was conveyed to the Philadelphia and Reading Railroad by this instrument and mentioned in Schedule A attached to it? A. I believe I am acquainted with all that property.

Q. Was that property of any considerable value? A. It was.

Q. Has any of it been sold since that deed? A. Yes, sir; some of it has been sold.

Q. What has been realized for the sale of that which has been sold? A. There have been sold, according to this statement, over $450,000 of the property.

Q. What is the value of the property still remaining thus acquired from the Navigation Company? A. About $900,000 or more. Not less than $900,000. I would say a million dollars, not including properties attached to the locks, known as lock house properties, which have always been considered as part of the works, but still, that does take in lock house properties, and property that has been held for the maintenance of the canal. So that the one million dollars of property not sold does not include those locks.

Q. How long was the canal at the time you first came into the employ of the company, in 1862? A. It was 108 miles in length from Port Carbon to Philadelphia.

Q. Did it run outside the State of Pennsylvania? A. No; it did not. The southern terminus was at what is now Spring Garden Street bridge in West Philadelphia, or Callowhill Street, and what is named in the charter as the Lancaster Schuylkill bridge.

Q. At that time did the Schuylkill Navigation Company have any relations whatever with the Reading Railroad? I am still speaking of 1862. A. No; it had not.

Outside of paying the Reading Railroad for the transportation of coal from the mines to the shipping landings.

Q. Were there other railroads at that time serving the docks on the canal and delivering to it coal from various collieries in the region? Do you remember the Mill Creek Railroad? A. Yes, sir; I remember the Mill Creek Railroad from Port Carbon to St. Clair at that time, or a short distance above St. Clair.

Q. The Schuylkill Valley Railroad? A. The Schuylkill Valley Railroad was serving the navigation landings at Port Carbon, from Port Carbon to Tuscarora east of Port Carbon.

Q. The Norwegian and Mt. Carbon Railroad? A. The Norwegian and Mt. Carbon was serving the canal landings at Mt. Carbon, one mile below Pottsville, and that railroad was the Norwegian Railroad in two branches, the east branch and the west branch, running a short distance above Pottsville.

Q. And the Mine Hill and Schuylkill Haven Railroad? A. The Mine Hill and Schuylkill Haven Railroad was in operation at that time from Schuylkill Haven, connecting directly with the Schuylkill Haven landings, and also connecting with the Reading Railroad, and operating coal down from the mines in the Mine Hill district.

Q. And the Little Schuylkill Railroad? A. The Little Schuylkill was built in 1838, and was in operation from Port Clinton to Tamaqua, and brought coal from the neighborhood of Tamaqua to the canal landings at Port Clinton.

Q. In those days were there any collieries adjacent to the canal, still speaking of 1862 or 1863? A. No; there were no collieries adjacent to the canal.

Q. What was the nearest colliery to the canal as you recall in those days? A. The nearest collieries I think were those on Mill Creek in the neighborhood of St. Clair.

Q. How close were they? A. About three and a half miles would be the closest I think.

Q. Was the canal dependent upon the railroads of that locality which we have referred to for the delivery of coal

to it for transportation over the canal? A. Yes, sir. The canal was entirely dependent upon the railroads for its coal tonnage.

Q. At that time did the Navigation Company control any of these railroads that we have been referring to, or own any of them? A. It did not own any of them, and my impression is that it did not control any of them.

Q. So far as you are aware, it did not control any of them? A. So far as I am aware, it did not control any of them. Each of the railroads had its own organization entirely independent of the Schuylkill Navigation Company.

Q. How far distant from the canal were most of the collieries upon which it was dependent for coal shipped over it? You spoke of one being as near as four miles. How far distant were most of them? A. At that time?

Q. Yes. A. I should say that the average distance would be from thirty to thirty-five miles.

Q. Going back a moment to the subject of tolls, can you say what the average rate per ton by way of tolls which the Schuylkill Navigation Company received was for its water transportation in the decade ending in 1870? A. Yes, I can. In the decade ending 1870, the average rate of tolls was 98.3 cents per ton.

Q. And was the part of the through transportation which the Navigation Company kept for its service? A. Yes, sir.

Q. What was the average rate of the toll in the first ten years under the Reading Railroad's lease, from 1870 to 1880? A. It was 72.3 cents per ton.

Q. That again being the amount which the Navigation Company kept out of the through rate for its part of the transportation service? A. Yes, sir; out of the through rate. That we understand was the average rate, 72.3 cents per ton for all points on the canal. It is the average of the entire bulk of transportation, including through to Philadelphia and way stations as well, wherever coal was delivered to by canal.

Q. What has been the trend since that time? Have

the tolls worked gradually upward or gradually downward? A. The trend has been downward except in one decade.

By Mr. Coudert:

Q. Which one? A. In the decade from 1901 to 1910 it was slightly upward.

By Mr. Reynolds:

Q. By 1912 how far had it got above 98.3 cents? What has it been in the last five years? A. There has been no change in the last five years. The average rate has been 47.5 cents per ton.

Q. Speaking generally of the history of canal transportation in this part of the country under private direction rather than governmental, have the canals been successful in Pennsylvania? A. No; they have not been successful in Pennsylvania, and I may say that canals of small size, other than ship canals, have been decidedly unsuccessful over the entire United States.

Q. Are you familiar with the Pennsylvania canal? A. I was familiar with it slightly during its life time. I had seen it a number of times and had met the superintendent a number of times when he was in charge, so that I was familiar to some extent with their operations.

Q. Was that a State enterprise originally? A. It was, I believe, originally a State enterprise.

Q. Is it now in existence? A. It is not now in existence.

Q. About how long ago did it give up the ghost? A. About twenty-five years ago. As nearly as I can recollect, it was about the year 1888 or 1889.

Q. Are you familiar with the Monongahela navigation? A. I am, or was, years ago. I was called in by the United States engineers, together with another member of the American Society of New York, to go over the Monongahela navigation with them to look over the possibilities of improving that line of navigation through to the West Virginia line, from Pittsburgh to the head of Monongahela navigation.

Q. Did you discover that that was a thriving proposition

on that investigation? A. It was not such a proposition as we thought would be bettered by any enlargement of it. All of us thought at the time that it would be better to maintain the works just as they had been maintained, and not go into the building of more dams and more locks so as to enlarge the navigation. The river was navigable for small steamers and for towing barges. It was not thought it would be advisable to go into any further enlargement as it would not pay. On the lower Monongahela traffic had almost disappeared by reason of the building of the railroad.

Q. Is that navigation used to any extent now? A. Oh, yes, it is used, the same as the Allegheny River is and the Ohio River. It is an open river.

Q. Were you familiar with the Chesapeake and Ohio canal? A. Only slightly.

Q. What became of that? A. The Chesapeake and Ohio went out of existence years ago. How long I do not know. It is not operated any longer as a through line of canal navigation.

Q. The record here discloses that the Lehigh Coal and Navigation Company had some rosy dreams about canal navigation, and were going to substitute electric motive power for mules. Were you familiar with that movement to bring up to date canal transportation? A. Yes, sir; I was familiar with the movement, but only from what I heard of it and read about it at the time. I knew it was being tried.

Q. It was discussed in the engineering journals, was it not? A. Yes, sir; and in other publications.

Q. Was it adopted as a means of supplanting the faithful mule? A. No; it was not. Experiments seemed to, and did show that it was too expensive a motive power for boats; that it was better to keep to the mule traffic.

Q. About what is the rate of speed at which a canal boat loaded can be forced through the water in the ordinary canal? A. That depends entirely upon whether it is going with the current or against the current.

Q. Give us first the express speed and second the freight speed against the current. What would be the reckless

speed they might have been going with the current? A. The light boats go against the current, the empty boats. All of these canal navigations from the coal regions are on what we would call a descending navigation with the boat loaded. The light boat would go up stream against the current.

Q. Generally your loaded boat is with the current? A. With the current in the canal.

Q. Give us what the rate of speed normally is of towing a boat loaded with the current? A. It is not over a mile in a half an hour.

Q. Is that any handicap in competition with the railroad? A. No; I do not think that the question is one of speed at all. That is not what led to the abandonment, or nearly abandonment, of canal systems and diversions of freight to the railways. Not the speed.

Q. What became of the Union canal? Where did that run? A. The Union canal was a small canal work narrow, and of shallow depth, not over four and a half feet, I believe, in depth, and extended from Reading to Middletown on the Susquehanna River.

Q. That was chartered by Robert Morris, was it not? A. No. The navigation that was chartered by Robert Morris in 1792 was from the Delaware River to Reading to connect with a line to be built to the Susquehanna, called the Delaware and Susquehanna canal.

Q. What became of the Union canal? A. The Union canal went out of use and was closed years ago.

Q. How many years ago? Fifty? A. No; not fifty, but nearly so.

Q. Do you remember the North Branch canal? A. I saw portions of it years ago. I had no particular acquaintance with it.

Q. That also died before you got acquainted with it? A. You might say that it did. It went out of existence in the eighties—somewhere between 1884 and 1890.

Q. All these were privately owned and operated canals, were they not, with the exception of the first one, the Pennsylvania canal? A. They were.

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Q. They have all gone to the scrap heap? A. Yes, sir.

Q. They were all in Pennsylvania? A. Yes, sir.

Q. That is what happened to canal transportation in this part of the country? A. Yes, sir. It is what will happen to it in New York State, with the New York and Erie. They will find out that the expenditure of one hundred and ten million dollars on a canal ——

MR. COUDERT:—You are speaking as a prophet, having been in the canal business and not having made a success out of it? A. I am speaking of my knowledge of engineering and water navigation, that the New York and Erie canal improvement as it is being made is not large enough to answer the purpose for lake navigation going through, as they expect it to handle, and that it will not interfere in the least with the traffic of the New York Central. I may say the same thing of the Panama Canal, that it will not interfere in the least with the traffic of the transcontinental railways. I ought to know it. I have been in the canal and railroad service all my life. If I do not know it, nobody knows. Whether you call it prophecy or not, that is what will happen with the Panama. It will do an immense trade, but it will not do a trade that will hurt the transcontinental railways. It will open up a new trade. The Erie will be operated and take part of the lake trade, but not all of it, by any means, and will not get the local trade. That will still go in carload lots to the New York Central. Many of you will live longer than I will and you will have a chance to see whether that will turn out or not.

By MR. REYNOLDS:

Q. Going back to the consideration of the situation, where was your Philadelphia terminal pool of this canal navigation when you first came to it in 1862 to 1869? A. It was in tidewater of Fairmount locks, which is just above Callowhill Street and Spring Garden Street.

Q. How far back up on the canal did that Fairmount pool run? A. Six miles, to Manayunk.

Q. Did the city of Philadelphia at that time have any control over that pool? A. It had a joint agreement with the Schuylkill Navigation, entered into in the year 1824, I

think, under the terms of which the city of Philadelphia was to build and maintain the Fairmount dam, which took the place of what had been the original outlet of the canal at the Falls of the Schuylkill, and, in return for that the city of Philadelphia was to have the right to use the water power of Fairmount dam at the Fairmount Water Works to pump water into its reservoirs, for the supply of the city, and one of the provisions of that agreement was that the City was not at any time to pump the water below the top of the dam, and was not to interfere with the navigation of Fairmount pool by the Schuylkill Navigation.

Q. What occurred in the late sixties in respect to that Fairmount pool? A. The city of Philadelphia in operating its turbine water wheels at Fairmount had been interfering with the passage of boats through the pool of Fairmount dam for some years prior to 1869. It was almost a yearly occurrence that the navigation was interfered with and stopped at times for ten days to two weeks. This culminated in the year 1869, when, on the 11th of August, in consequence of the action of the city of Philadelphia, in violation of its agreement, in drawing down the level of Fairmount pool for the supply of water power to the turbine wheels at Fairmount, the navigation was so impeded that loaded boats could no longer pass. This stoppage of the navigation continued until the 7th of September, 1869, when by using steam power the city was enabled to restore the navigation so that it was kept open for a part of each day only until the 25th of September, on which day there was a heavy rain, and the navigation was fully resumed.

Q. Following that, in October of that year, did you have any serious flood troubles? A. On the 4th of October, 1869, the same year, the heaviest flood ever known on the Schuylkill River swept the valley for its entire length and caused great damage to the Navigation works, requiring the expenditure of a large sum of money for repairs and rebuilding.

Q. Was that followed then by any unusual conditions in the mining regions? A. Yes, sir.

Q. What happened then? A. That was followed by the

protracted suspension of mining operations in the first and second coal fields for two weeks, in March, 1870, and for the entire period from April 1st to August 1st, so that out of the forty weeks constituting the shipping season by canal of the year 1870, fully one-half was lost.

Q. As far as you know did the Philadelphia and Reading Company have anything to do with the action of the city of Philadelphia or the floods or the strikes? A. They had nothing whatever to do with it. It was a series of misfortunes.

Q. Following those events, the canal was leased as we have found? A. Yes, sir. That is the fact, that these misfortunes caused a great loss to the Navigation Company in traffic and tolls, and brought about the lease to the Reading Railroad Company on the 12th of July, 1870.

Q. After that lease did the Railroad stifle the canal transportation in any way? A. No; the Railroad Company did not. On the contrary, it did a great deal to try to build up the Schuylkill navigation and increase its traffic. The proof of that is the fact that immediately after the lease the Railroad Company expended large sums of money in building new boats, in an effort to increase the carrying capacity of the canal, and to keep it up to a business of forty thousand tons of coal per week. Over one hundred boats were built during the year 1871. In that year the canal carried 1,010,170 tons of anthracite coal.

Q. Going to the lease and referring to the clause which I read, which provided that nothing in the lease should require the railroad to keep up and maintain any part of the canal north of Hamburg, how far in the direction of Philadelphia is Hamburg below the upper end of the canal at Port Clinton? A. It is three miles below the upper end at Port Clinton.

Q. The upper end of the canal to-day is at Port Clinton? A. At Port Clinton.

Q. So that when this lease was made this provision was put in referring to the possible abandonment of the canal above Hamburg? A. Yes.

Q. What had been the attitude of the Schuylkill Naviga-

tion Company itself in respect to this question of abandoning the canal above Hamburg prior to the making of the lease? A. It was realized by the officials of the Navigation Company that the upper end of the canal from Hamburg to Port Carbon was exceedingly difficult to maintain, and costly. In that distance of fifteen miles there were thirty locks. The river was narrow and shallow, the dams were continually obstructed by dirt and gravel that was brought down by the streams, so it was an exceedingly difficult proposition to maintain that end of the navigation, and a costly one. And that led the officials of the Navigation Company to suggest that at some time it would be better for all interests to move the head of navigation to Hamburg, and with that in view, after the lease, the Philadelphia and Reading Railroad Company, purchased over three hundred and sixty acres of land, and had the surveys made for new docks and equipment at Hamburg.

Q. With the navigation head at Hamburg was the canal still in a position to receive coal from the various railroads leading from the coal region down to Hamburg? A. Yes, sir; because part of the plan was to build a short connection, about a mile and a half in length, from the main line of the Reading Railroad over to these proposed new docks at Hamburg, and there receive the deliveries of coal the same as is now received at Port Clinton.

Q. How far was it from the original head of navigation on the canal at Port Carbon to Schuylkill Haven? A. It was about six miles—close to six miles.

Q. Do you remember when that was abandoned as a navigation? A. That was abandoned in the year 1884, and all shipments by canal made at Schuylkill Haven.

Q. When was the canal abandoned from Schuylkill Haven to Port Clinton? A. In 1888.

Q. What is the distance from Schuylkill Haven to Port Clinton? A. I think by canal it is thirteen miles, close to it. I am not quite sure of this distance.

Q. Prior to these abandonments what was the particular source of expense in keeping the canal open for navigation? A. On the upper end?

Q. Yes. A. The great cost of steam dredging and maintaining the pools made by the dams in the river, and the excessive lockage, requiring a large number of lock tenders and a larger number of men for taking care of the navigation than was the case below Port Clinton.

Q. How much of the time did you have to dredge up above Schuylkill Haven and Port Clinton in those days? A. There were two steam dredges at work, and sometimes three, during the whole boating season. In fact, the custom was to get the dredges to work as quickly after the Winter season as it was possible, in order to prepare the river channels for boating, and that dredging was kept up until the close of navigation.

Q. Why should it be necessary to do any more dredging up in that end of the canal near the coal regions than down in the lower end of the canal? A. It was largely owing at that time to mountain streams, which at times of flood brought refuse down into the river near the head waters, and that is the case with all streams going through agricultural districts and mountain regions. Below Port Clinton the river is larger and the dams are wider and deeper and not so easily filled up.

Q. The cross section through which the water flows gives a better current? A. Gives a better current, and more volume of water.

Q. Who recommended the abandonment of the upper end of the canal? A. I recommended it myself in 1884 first for the section from Port Clinton to Schuylkill Haven, and in 1888 from Schuylkill Haven to Port Clinton.

Q. Did you not do that at the dictation of somebody in the railroad? A. No. They had nothing to do with it. It was my own project, and when I had worked it out I went to the President, Mr. MacLeod and obtained his consent to go on and make the change.

Q. Can you honestly say, with due regard for your oath, that you did that purely as an economic engineering proposition? A. I can. That was purely as an economic proposition, and the Railroad company at the time had

nothing to do with having the examination made and the suggestions made to abandon it.

Q. At the time that that was done, was the result of the abandonment of the upper end of the canal anything more than to simply lengthen the rail haul in bringing coal to the canal? A. That is a fact, and that is all that it did, it lengthened the haul to the canal landings at Port Clinton for all coal coming down from the neighborhood of St. Clair, Pottsville and Schuylkill Haven off the Mine Hill road. But, at the same time, it made it much easier to receive coal at canal landings at Port Clinton by way of the Little Schuylkill Railroad, which had its terminus at Port Clinton. That part of it was easy.

Q. So that it made it easier to get the coal from the eastern end of the Schuylkill coal region? A. Yes, sir; at the eastern end.

Q. And added a trifle to the mileage of the railroad in the vicinity of Pottsville? A. It added a trifle to the mileage in the Pottsville district, but did not change the conditions, but, in fact, bettered the conditions for the eastern division.

Q. What is the capacity of the boats now operating on the canal? A. The capacity now is 165 tons.

Q. The canal is now operated, as I understand you, from Port Clinton to Philadelphia? A. It is.

Q. That distance is approximately how many miles? A. That distance by canal to river navigation is ninety miles.

Q. And that is three miles further than the Navigation Company itself was considering operating the canal in the late sixties? A. Yes, sir.

Q. They had already proposed to abandon it from a point three miles this side of its present terminus? Is that true? A. That is true.

Q. What is the state of maintenance of that canal at the present time; good or bad? A. It is still maintained in as good condition as it ever was. In fact, it is in better condition than it was years ago, because concrete struct-

ures have taken the place of wooden structures to a large extent, both in canal navigation structures and in the road and farm bridges that the canal is obliged to maintain.

Cross examination.

By Mr. Coudert:

Q. When you were first connected with the canal it was a very flourishing proposition, was it not, compared to its present day decadence? A. Yes; in comparison with the present it was.

Q. In 1869 it had over a million tons of freight, did it not? A. Not of freight, of anthracite coal.

Q. At the present time it has how much? A. It has in anthracite coal in the normal years about seventy to seventy-two thousand tons. And has no miscellaneous freight traffic.

Q. At the time you first became connected with the canal it was a competitor for anthracite with the railroad? A. Well, I would not put it in that way. It was not a competitor, it had its own normal trade and the railway had its own normal trade. The points to which coal was carried by canal at that time, and, in fact, at the present time, had no railroad connections, no railroad sidings, they were located on the water front both on the line of the river and in tidewater. So that we could scarcely call that competition. The railway traffic went by its own lines to its own siding connections, and the canal traffic went by water to the works and establishments that were located on the water front. It was a natural division of traffic.

Q. What serves those points now that you say were more exclusively served by the canal? How are they now served? A. As far as the water front is concerned, they are still served by water. There are fully one-half of the anthracite, yes, more than that, fully three-fourths of the anthracite tonnage by canal goes to manufacturing establishments that have railroad connections.

Q. And the other points you mentioned are now served by the railroad as far as they are served at all? You have mentioned a number of points which were served exclusively by the canal in the early days. I ask you now whether those points are served by railroad or not? A. They are, because those points now have direct railway connection, and prefer to have their coal by carload lots rather than by boat loads.

Q. I ask you whether you agree with the statement, "The Schuylkill canal runs parallel to it, and was long built before the railroad, being one of the earliest canals in America. The moment the railroad began to take the business the canal fell back, but the canal being a competitor had always the right to reduce the charges," and so forth. Is not that the fact? A. No, sir; that is not the fact.

Q. You do not agree with the president of your road at that time? A. I do not agree with it in exactly those terms.

Q. He stated that as a fact. Was it not a fact? You do not dissent from the fact, do you? A. Let me read it myself, or you read it again.

Q. "The Schuylkill Canal runs parallel to it, and was long built before the railroad, being one of the earliest canals in America. There was a time before the construction of the Reading Railroad when that property was selling for $260 a share for $50 paid. The moment the railroad began to take the business the canal fell back, but the canal being a competitor had always the right to reduce the charges, and upon the tonnage of the Reading Railroad to-day a reduction of ten per cent. per ton in carrying coal, which could be brought about by competition, would amount to $800,000 a year." Was that statement true or false? Your president made it. A. The part of it that I do not agree with, and think is wrongly stated, is where it says that the moment the railroad began to take the business. The railroad did not take the business. It left of its own accord because the public wanted it taken by railroad instead of by canal. I must admit that there are very few that understand that question

as I do, because they were not so intimately connected with it. It has always been wrongly stated in the newspapers. It has often been wrongly stated by public statistics, and in that statement it is not exactly the true condition; the railroad did not take it; it left of its own accord. And, neither the railroad nor the Navigation Company had any control over the wishes of the public as to which way they wanted the coal, whether by rail or canal. The public decided that question for itself.

Q. But, as a matter of fact, I take it that you do not dissent from the statement made here by the president of your road that the canal and the railroad were competitors? Is not that the fact? A. I never saw any signs of competition.

Q. So that in your view, despite the views as you say of the public, the newspapers and the president of your road, there was no competition? A. I did not consider it competition. It was the natural working out of the problem. The public did not want the water transportation. Just as I tell you, they will never want it in the State of New York.

Q. At the time that you were first connected with the canal its traffic in coal was something like a million of tons. That of the railroad was what? Do you remember? A. That I do not know. I have no recollection of those figures, although I have seen them.

Q. The tonnage carried by the railroad at that time was two or three millions of tons, therefore, the canal was carrying between a half and a third of that amount, was it not? A. Yes, sir; according to those figures.

Q. Do you know whether there was an agreement to give to the Schuylkill canal forty-five per cent. of all the coal tonnage between the months of March and December that came upon certain lines, which was to supply the Navigation Company, as well as the railroad company, and in default of their getting that, to pay them twenty-five cents a ton? A. Yes, sir; I know of that arrangement.

Q. You know about that arrangement, do you? A. Yes, sir; I knew of that arrangement.

Q. And still in view of that arrangement you insist that the railroad and the canal were not at least potential competitors? A. You may call it competition, but it did not work as competition. The public had its own way.

Q. That is to say, not what Mr. Smith would call competition? A. I would not call it competition.

Q. But everybody else would. A. But if everybody else called it competition, I would not believe it was competition. I would believe that there were other conditions that were at work.

Q. And yet you were aware of the fact that at the time there was an agreement between the railroad company and the canal company, by which they were to divide up the traffic in anthracite? A. Yes, sir; there was such an arrangement between the two companies.

Q How long did that arrangement last? A. I do not remember the year in which it went into effect, but my impression is, and my recollection is, that it went out of existence in 1870 at the time of the lease of the navigation works to the Reading.

Q. It ceased at that time? A. I think so.

Q. When did the great fall-off in the traffic of the canal begin? A. It began in the eighties I think—along about 1883 or 1884.

Q. Was there any particular change in the rates either of the canal or of the railroad at that time? A. No; I think there was no particular change in the rates.

Q. The conditions continued about the same, but the traffic did not go by the canal any longer? A. It commenced to fall off.

Q. Can you tell me about when it commenced seriously to fall off? A. I think it commenced about the year 1884.

Q. And has been falling off ever since? A. It has been failing off ever since.

Q. Was there any change in the rental provided in the

lease at any time, as far as you know? A. That I do not remember.

Q. You do not remember whether at any time the rental was reduced to a merely nominal sum? A. No, sir; I do not know that. That was not a matter that would come under my observation.

Q. Do you say that during one of the decades, I think you said between 1901 and 1910, there was a raise in the toll rates? A. Yes. That is the average rate of tolls for that decade ending with 1910 was 60.4 cents a ton, whereas in the decade preceding, ending in 1900 it was 50.6 cents, so that there was a raise of very nearly ten cents a ton.

Q. Who fixed those tolls? A. They were fixed by the Schuylkill Navigation Company.

Q. Who were the individuals who fixed that? Do you know? A. In 1901 I issued that toll sheet myself, and also the toll sheet in 1900.

Q. That is, you practically fixed the toll yourself? A. Yes, sir.

Q. You were in complete and entire charge? A. I was in charge of the maintenance and operation of the works, and it was my duty to issue the toll sheets.

Q. Whom did you consult about that? You did not do that wholly on your own responsibility I take it? A. It was a matter of how much the Navigation Company could get out of the tonnage tolls after providing for the boatman's freight and providing for the rate that must be paid to the Railroad Company for bringing the coal down from the mines to the shipping landing at Port Clinton.

Q. You figured that out yourself alone and fixed the rate without consultation? A. Not alone. I had the assistance of the canal collector, who was familiar with all those things, at Port Clinton, and also the help of the canal collector at Fairmount when that was necessary. It was a matter for the canal officials to fix those rates to get the most out of it possible.

Q. By whom were those rates ratified? A. At that time they were issued over my own signature and the signature

of the canal collector. They were not ratified at all, as I remember, by any other officials of the Company.

Q. How do the rates for taking coal from the mines by canal compare with the railroad rates? A. The rate by railroad has always been higher and it is still higher. It is cheaper by canal than it is by railroad.

Q. It has always been so, has it? A. It has always been so, but never as much of a difference as there is at the present time. The rates at the present time are, and for some years past have been about twenty-five cents less by canal than they are by rail.

Q. So that the disproportion between the railroad rates and the canal rates is greater now than it ever has been? A. It has been greater for the last three years than it ever was before, and yet that does not attract trade.

Q. Why not? A. Because the public do not seem to want it by water.

Q. You think they have an inherent prejudice against anything that comes by water? A. I do not know whether it is an inherent prejudice, but it is the ease and convenience and less costly mode of handling it after delivery by railroad. The railroad is the easiest delivery. The inconvenience and added expense is in lifting it out of the canal boat and putting it in the wagons or any other conveyance and taking it to its ultimate destination. That operates against canals.

Q. That in your opinion is the main factor? A. That has been in the past the main factor. There is another factor; the inclination of large manufacturing establishments to go to the use of bituminous coal instead of anthracite. The canal this year will lose over thirty-eight thousand tons of its tonnage because a large manufacturing establishment in the Twenty-first Ward has within ten days made up its mind to go to bituminous coal instead of anthracite. And that is going on all over the city and all over the east, the increased use of bituminous coal in power plants and for steam purposes rather than anthracite.

Q. And yet the anthracite carried by the railroad has not fallen off? A. It will fall off to that extent, the anthracite.

Q. The figures show that it has not as yet, but that it has increased? A. That is because the eastern part of the country is increasing in population, and that keeps up the figure. It is still lost.

Q. Your theory is that while the greater use of bituminous coal would affect canal traffic it would not affect railroad traffic? A. Yes, sir; it does affect railroad traffic. It affects railroad traffic in Kensington, for instance, where there is no canal communication, nothing but railroad and in the turn from anthracite to bituminous coal it certainly affects the railroad that carries the anthracite.

Q. That is the only other explanation you have for the falling off of canal traffic, other than the difficulty of taking the coal out of the canal boat? A. That seems to be the main factor. The turning to bituminous coal is of very recent date. The other factor, the handling of the boat and loading, is matter of many years past.

Q. That has always been so? A. Yes, sir.

Q. That was so in the sixties and seventies? A. Yes, sir. It has always been so.

Q. So that it was always an important factor in the game? A. It is not guess work on my part.

Q. You are an expert, are you not? A. No. That is a fact. I tried it with the Baldwin Locomotive Works, and they would not take it by canal, and went back to the railroad.

Q. You refer to the fact that the difficulties of unloading the canal boat were always a constant factor, do you not? A. I do.

Q. And that has always been so? A. A constant hindrance to transportation by water.

Q. It has always been a hindrance to transportation by water? A. Yes, sir.

Q. That is the main difficulty? A. Yes, sir.

Q. It was the thing which was always present and checkered your engineering career? A. Yes, sir.

Q. And that difficulty existed in the sixties and seven-

ties? A. There were not so many railroad sidings in the sixties and seventies.

Q. But that difficulty existed with the canal transportation at that time? A. Yes, sir; it did not fill the bill.

Q. Do you know whether the Reading system ever made any efforts to dispose of the Schuylkill Canal? A. I do not know positively, but I have never heard that they did. I never had any intimation that they did.

Q. Their investment in the Schuylkill canal has never financially been a profitable one, has it? A. No; I should say not.

Q. It bid fair to be at the time they took it over? It was a flourishing property? A. I can't say that it was altogether so.

Q. If I remember your testimony in your direct examination, in answer to my friend, Mr. Reynolds, you said that in 1870 the traffic had been over a million tons—a million and ten thousand tons? A. Yes, sir; over a million tons.

Q. Was not that about the high water mark that you reached in tonnage? A. Well, I suppose I can only answer that question by admitting that even at that date in 1870, I foresaw ——

Q. Please answer the question. A. I think it was not the high water mark in tonnage. I think there were a few years, not often, that it exceeded that. But, the tonnage had been as high as a million three hundred and sixty odd thousand tons somewhere back in the sixties, I don't know the year, but it had been up to over a million three hundred and fifty thousand tons.

Q. Would you have considered 1871 one of the big years? A. I would consider that a big year for the canal, 1870, and 1871 was still larger, I believe.

Q. That was still larger? A. I think that was still larger than 1870.

Q. That was a year or more after the lease? A. Yes, sir.

Q. Do you remember how the tonnage held up for

four or five years after? A. It held up pretty well, until about 1883 or 1884, if I recollect rightly when it commenced to decline and kept on declining.

Q. Is that about the time you began to discontinue the upper portion of the canal? A. Yes, sir; it was about that time.

Q. It was about synchronous with that event, was it not? A. It had nothing to do with the event. It may have been synchronous in time, but there was no possible connection between the two except to try to save money in operating.

Q. But that was the coincident fact, was it not? A. It happened afterwards to be the coincident fact.

Q. In those great banner years you speak of, when you ran up to a million, and how many —— A. About a million three hundred and fifty thousand tons, if I recollect rightly.

Q. The canal was open all the way from Philadelphia to where at that time when it had a large tonnage? A. It was open at that time to Port Carbon.

Q. Is that as far as it ever got? A. That was as far as it ever got. That was the end of navigation.

Q. So that the years of maximum tonnage were also the years of maximum length? That is the fact, is it not? A. That is the fact, and, for this very good reason, that it was in the period just subsequent to the Civil War, when everything was active.

Q. That was the naked fact untinctured by inference? A. Yes, sir.

Q. That when the canal was long it was prosperous and when it was short it was not? Is not that the fact? A. No, sir; it is not the fact, because it is a qualified fact.

Q. But it is a fact? A. It would have had the same tonnage if its shipping landings had been at Port Clinton and the docks there to handle it. It would not have made any difference.

Q. Have you at any time since the canal was truncated at Port Clinton had anything like 1,300,000 tons? A. No.

Q. What is the maximum tonnage you have had on the canal since it was so emasculated? A. I must ask you to correct the figure of 1867 for the maximum tonnage. It was not the year 1867. The greatest tonnage of anthracite coal was in the year 1859, when it was 1,372,000 tons.

Q. Before the Civil War? A. Yes, sir; 1859.

Q. What was the next largest year? A. And the canal at the same time had a miscellaneous freight tonnage of 363,000 tons.

Q. What was the next largest anthracite year? A. I have not got those figures, but the canal kept up this large tonnage into the period of the Civil War, in 1861 to 1864, there was a large tonnage, and immediately after that when there was an expanse in business throughout the country, it had a large tonnage, up to say 1869.

Q. You kept records of all that tonnage, and you could furnish me with the anthracite tonnage of each year, could you not? A. Yes, sir; I could.

Q. Perhaps you could tell me in a general way what was the largest tonnage you have had on the canal since the terminus became Port Clinton? A. No; I could not from memory.

Q. It was very far from a million tons, was it not? A. If my memory serves me rightly, it was not up to a million tons. I do not recall the figures.

Q. That is a fact you can give me? A. Yes, sir.

Q. During the time that you were in charge of the canal, the toll rates were fixed by you? A. Yes, sir. They were in later years fixed from being governed by rates for preceding years, and by any changes that might have taken place, and just at that time the rates were changed. There were no great changes from one year to another.

Q. What did you figure your profit, what percentage, or how did you figure it? A. We never figured on any profit. It was run at a loss. We did the best we could and got as much as possible out of it.

Q. In what year did the canal first show a loss? A. I think about the year 1866 or 1867.

Q. Did it show a loss in 1870 and 1871, when you had that large tonnage of over a million tons? A. Yes, sir; it showed a loss.

Q. So that when the railroad took it over it was not a paying proposition in your judgment? A. No; it was not. It had been subject to the misfortunes that I stated in my direct examination.

Q. So that the purchase was not, to your judgment at that time, a good investment? A. The heavy floods had caused such destruction of the work and suspension of mining for weeks at a time, and the continual action of the city of Philadelphia in drawing down the water of Fairmount pool, all such things that hindered navigation——

Q. And made it a poor investment? A. Yes, sir.

(At 1.15 a recess of one hour was taken.)

Re-direct examination.

By Mr. Reynolds:

Q. In going over the various privately owned canals about which I asked you, I observe that most of them were abandoned about thirty years ago? Is that correct? A. Yes, sir. As nearly as I can recollect it is twenty-five or thirty years ago.

Q. Practically all of them were abandoned about that time? A. Yes, sir; nearly so.

Q. Has the Schuylkill canal always been, and is it now dependent upon other transportation via land routes, either wagons or cars, to bring coal to the canal? A. Yes, sir; it always has been so dependent.

Q. In comparing the railroad transportation service with the canal transportation service, you mentioned the fact that there had been a great deal of siding developments, construction of sidings into manufactories on the part of

the railroads since the seventies. Has the size of the railroad car been increased since that same period? A. Yes, sir; very much so.

Q. What was the size of the railroad car in service in 1870? How many tons? A. I cannot give you the comparison for the year 1870, but going back to long before that, the Reading Railway cars were five tons. That was the old style cars. The Schuylkill Navigation coal cars, of which they owned 3500, were four tons and a half, small cars.

Q. Four or five ton cars, in those days? A. Yes, sir; that was the car of those days.

Q. Is the hopper bottom car a development of the railroad since 1870? A. No; I think not, because the old style cars, as I knew them in both the canal and the railroad coal trade back in the sixties were hopper bottom cars, small four and a half ton cars were hopper bottom. They dropped their loads.

Q. Has there been any improvement in the methods of railroad transportation since 1870? A. Yes, sir; very great improvement.

Q. Has there been any such improvement in the transportation by canal since that period, generally speaking? A. Not generally speaking, only a difference in the build of the boats. That is about all.

Re-cross examination.

By Mr. Coudert:

Q. You are speaking of transportation of coal or transportation generally, when you say there has not been any improvement? A. Do you mean by railroad?

Q. Yes. A. I mean improvement generally both in the size and build of cars, and in the size and build of locomotives, and in the increase in the width of rail, and improvement of the track.

Q. Has there been any improvement in canal boats? Are they any larger or better? A. They are not any larger

now than they were in 1862. They are not any larger in fact than they were after what is known as the improvement of the Schuylkill Navigation, in 1846. That is the time when the canal boat was enlarged.

Q. There have not been any improvements in canal boats from that time until now? A. Not from that time until now. The last improvement to the canal works was in 1846. There has been no change since.

Q. Even under that static condition of canal navigation, canal rates are lower than the railroad rates? A. Yes, sir; they are lower than the railroad rates. Yet that does not attract the trade.

WILLIAM H. WHITE, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. You are the controller of the Philadelphia and Reading Railway Company? A. Yes, sir.

Q. Have you any connection whatever with the Philadelphia and Reading Coal and Iron Company? A. Nothing whatever.

Q. Have you at my request prepared a statement showing for the years since the Philadelphia and Reading Railway Company was organized the investment in property devoted to public use and the percentage of net operating income to that property investment? A. Yes, I have.

Q. Is that the statement? (Statement shown witness.) A. This is the statement I got up; yes, sir.

Q. When was the present classification of operating expenses promulgated by the Interstate Commerce Commission? A. July 1st, 1907.

Q. As to the statistics appearing on this exhibit subsequent to 1907 are the figures in accordance with the figures brought out by following those regulations and practices of accounting? A. Yes, sir.

Q. Prior to 1907 did you go to your books and recast the statements in accordance with those same rules? A. Yes, sir.

READING COMPANY

(INCLUDING LEASED LINES).

STATEMENT SHOWING, FOR THE YEARS INDICATED BELOW, THE INVESTMENT IN PROPERTY DEVOTED TO PUBLIC USE, AND THE PERCENTAGE OF NET OPERATING INCOM

	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907	
MILEAGE:												
Owned—Miles of First Main Track	1,253.70	1,335.92	1,459.23	1,404.67	1,457.85	1,470.82	1,490.00	1,491.43	1,484.06	1,470.50	1,480.04	
Owned—Miles of All Main Tracks	1,701.50	1,783.70	1,905.12	1,879.30	1,934.15	1,973.85	2,000.58	2,018.27	2,039.80	2,093.35	2,149.53	
Owned—Miles of All Tracks	2,637.03	2,741.17	2,895.93	2,868.40	3,004.14	3,073.64	3,134.51	3,156.64	3,196.55	3,317.78	3,392.15	
Operated—Miles of First Main Track	1,253.70	1,335.92	1,459.23	1,404.67	1,457.85	1,470.82	1,490.00	1,491.43	1,484.06	1,470.50	1,480.04	
Operated—Miles of All Main Tracks	1,701.50	1,783.70	1,905.12	1,879.30	1,934.15	1,973.85	2,000.58	2,018.27	2,039.80	2,093.35	2,149.53	
Operated—Miles of All Tracks	2,637.03	2,741.17	2,895.93	2,868.40	3,004.14	3,073.64	3,134.51	3,156.64	3,196.55	3,317.78	3,392.15	
COST OF ROAD AND EQUIPMENT:												
Cost of Road	$169,618,494.00	$174,058,978.00	$177,541,119.00	$179,758,795.00	$183,122,219.00	$186,181,485.00	$188,174,183.00	$190,936,136.00	$191,944,327.00	$197,766,332.00	$201,605,887.00	$
Cost of Equipment	19,186,111.00	19,210,678.00	20,872,021.00	24,444,779.00	27,653,444.00	31,825,963.00	35,022,107.00	35,256,530.00	35,018,149.00	40,796,234.00	41,959,184.00	
Additions Included in Operating Expenses												
Additions Appropriated from Income Account												
Additions Included as Rental Paid												
Additions Appropriated from Profit and Loss												
TOTAL COST OF ROAD AND EQUIPMENT	$188,804,605.00	$193,269,656.00	$198,413,140.00	$204,203,574.00	$210,775,663.00	$218,007,448.00	$223,196,290.00	$226,192,666.00	$226,962,476.00	$238,562,566.00	$243,565,071.00	$
WORKING CAPITAL:												
Cash on Hand	$535,510.00	$1,159,573.00	$1,273,048.00	$1,245,428.00	$1,539,883.00	$2,394,398.00	$2,054,903.00	$3,316,170.00	$6,121,364.00	$3,499,077.00	$2,087,442.00	
Materials and Supplies	1,157,408.00	1,146,042.00	1,429,277.00	2,278,265.00	2,289,033.00	1,979,960.00	2,555,421.00	2,611,937.00	2,306,886.00	3,675,739.00	3,152,270.00	
TOTAL PROPERTY DEVOTED TO PUBLIC USE	$190,497,523.00	$195,575,271.00	$201,115,465.00	$207,727,267.00	$214,604,579.00	$222,381,806.00	$227,806,614.00	$232,120,773.00	$235,390,726.00	$245,737,382.00	$248,804,783.00	$
COST OF ROAD:												
Per Mile Owned—First Main Track	$135,294.00	$130,291.00	$121,668.00	$127,972.00	$125,611.00	$126,583.00	$126,291.00	$128,022.00	$129,337.00	$134,489.00	$136,217.00	
Per Mile Owned—All Main Tracks	99,686.00	97,583.00	93,192.00	95,652.00	94,678.00	94,324.00	94,060.00	94,604.00	94,100.00	94,474.00	93,791.00	
Per Mile Owned—All Tracks	64,322.00	63,498.00	61,307.00	62,669.00	60,957.00	60,573.00	60,033.00	60,487.00	60,047.00	59,608.00	59,433.00	
COST OF ROAD AND EQUIPMENT:												
Per Mile Owned—First Main Track	$150,598.00	$144,672.00	$135,971.00	$145,375.00	$144,580.00	$148,222.00	$149,796.00	$151,662.00	$152,933.00	$162,232.00	$164,567.00	
Per Mile Owned—All Main Tracks	110,964.00	108,353.00	104,147.00	108,659.00	108,976.00	110,448.00	111,566.00	112,073.00	111,267.00	113,962.00	113,311.00	
Per Mile Owned—All Tracks	71,597.00	70,506.00	68,514.00	71,191.00	70,162.00	70,928.00	71,206.00	71,656.00	71,002.00	71,904.00	71,803.00	
INCOME ACCOUNT:												
Operating Revenue, As Adjusted	$22,781,260.00	$24,725,990.00	$25,990,670.00	$30,270,136.00	$31,868,979.00	$32,649,538.00	$37,350,619.00	$40,513,614.00	$43,263,585.00	$46,427,260.00	$50,073,852.00	$
Operating Expenses, As Adjusted	13,621,031.00	13,562,746.00	15,384,330.00	18,092,720.00	19,947,485.00	19,854,016.00	23,547,228.00	24,222,927.00	24,937,605.00	26,236,961.00	30,978,065.00	
NET OPERATING REVENUE, AS ADJUSTED	$9,160,229.00	$11,163,244.00	$10,606,340.00	$12,177,416.00	$11,921,494.00	$12,795,522.00	$13,803,391.00	$16,290,687.00	$18,325,980.00	$20,190,299.00	$19,095,787.00	$
Tax Accruals	724,588.00	654,953.00	678,274.00	620,004.00	634,927.00	653,448.00	651,835.00	703,470.00	698,307.00	789,156.00	1,023,645.00	
OPERATING INCOME, AS ADJUSTED	$8,435,641.00	$10,508,291.00	$9,928,066.00	$11,557,412.00	$11,286,567.00	$12,142,074.00	$13,151.556.00	$15,587,217.00	$17,627,673.00	$19,401,143.00	$18,072,142.00	$
OTHER INCOME RELATING TO OPERATION:												
Hire of Equipment—Cr. Balance	Dr. $165,751.00	Dr. $187,336.00	Dr. $277,745.00	Dr. $237,299.00	Dr. $168,037.00	Dr. $123,091.00	$74,409.00	$167,024.00	$40,947.00	Dr. $213,159.00	Dr. $128,060.00	
Joint Facilities—Cr												
Miscellaneous Rents—Cr	197,853.00	212,045.00	213,323.00	326,990.00	348,971.00	222,905.00	10,960.00	9,296.00	11,296.00	12,052.00	12,263.00	
TOTAL OTHER INCOME	$32,102.00	$24,709.00	Dr. $64,422.00	$89,691.00	$180,934.00	$99,814.00	$85,369.00	$176,320.00	$52,243.00	Dr. $201,107.00	Dr. $115,797.00	
TOTAL INCOME, AS ADJUSTED	$8,467,743.00	$10,533,000.00	$9,863,644.00	$11,647,103.00	$11,467,501.00	$12,241,888.00	$13,236,925.00	$15,763,537.00	$17,679,916.00	$19,200,036.00	$17,956,345.00	$
DEDUCTIONS FROM INCOME RELATING TO OPERATION:												
Hire of Equipment—Dr. Balance												
Joint Facilities—Dr												
Miscellaneous Rents—Dr	$39,695.00	$47,902.00	$40,914.00	$70,154.00	$80,392.00	$52,583.00	$60,244.00	$62,659.00	$68,473.00	$137,694.00	$129,842.00	
TOTAL DEDUCTIONS	$39,695.00	$47,902.00	$40,914.00	$70,154.00	$80,392.00	$52,583.00	$60,244.00	$62,659.00	$68,473.00	$137,694.00	$129,842.00	
NET OPERATING INCOME, AS ADJUSTED	$8,428,048.00	$10,485,098 00	$9,822,730.00	$11,576,949.00	$11,387,109.00	$12,189,305.00	$13,176,681.00	$15,700,878.00	$17,611,443.00	$19,062,342.00	$17,826,503.00	$
PER CENT. ON ROAD AND EQUIPMENT	4.46	5.42	4.95	5.67	5.40	5.59	5.90	6.94	7.76	7.99	7.32	
NET OPERATING INCOME, INCLUDING INCOME RELATING TO WORKING CAPITAL	$8,438,758.00	$10,508,289.00	$9,848,191.00	$11,601,858.00	$11,417,907.00	$12,237,193.00	$13,217,706.00	$15,768,101.00	$17,745,807.00	$19,120,204.00	$17,864,672.00	$
PER CENT. ON TOTAL PROPERTY DEVOTED TO PUBLIC USE	4.43	5.37	4.90	5.59	5.32	5.50	5.80	6.79	7.54	7.78	7.18	

E PERCENTAGE OF NET OPERATING INCOME TO SUCH PROPERTY INVESTMENT.

	1905	1906	1907	1908	1909	1910	1911	1912	1913
3	1,484.06	1,470.50	1,480.04	1,483.11	1,469.90	1,473.85	1,473.59	1,474.51	1,476.18
7	2,039.80	2,093.35	2,149.53	2,168.19	2,152.34	2,170.85	2,179.75	2,189.45	2,193.99
4	3,196.55	3,317.78	3,392.15	3,435.60	3,428.59	3,458.21	3,433.93	3,558.49	3,552.68
3	1,484.06	1,470.50	1,480.04	1,483.11	1,469.90	1,473.85	1,473.59	1,474.51	1,476.18
7	2,039.80	2,093.35	2,149.53	2,168.19	2,152.34	2,170.85	2,179.75	2,189.45	2,193.99
4	3,196.55	3,317.78	3,392.15	3,435.60	3,428.59	3,458.21	3,433.93	3,558.49	3,552.68
0	$191,944,327.00	$197,766,332.00	$201,605,887.00	$202,884,380.00	$204,799,493.00	$207,523,275.00	$211,791,443.00	$214,927,591.00	$217,892,098.00
0	35,018,149.00	40,796,234.00	41,959,184.00	47,777,541.00	46,289,055.00	46,291,604.00	49,241,031.00	48,132,186.00	52,387,731.00
	.....	.....	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....	.....	.....
0	$226,962,476.00	$238,562,566.00	$243,565,071.00	$250,661,921.00	$251,088,548.00	$253,814,879.00	$261,032,474.00	$263,059,777.00	$270,279,829.00
0	$6,121,364.00	$3,499,077.00	$2,087,442.00	$3,258,029.00	$3,829,492.00	$5,621,935.00	$4,196,883.00	$4,305,877.00	$5,929,264.00
0	2,306,886.00	3,675,739.00	3,152,270.00	3,016,557.00	2,456,364.00	3,509,455.00	3,101,763.00	2,944,954.00	4,133,106.00
0	$235,390,726.00	$245,737,382.00	$248,804,783.00	$256,936,507.00	$257,374,404.00	$262,946,269.00	$268,331,120.00	$270,310,608.00	$280,342,199.00
0	$129,337.00	$134,489.00	$136,217.00	$136,797.00	$139,329.00	$140,804.00	$143,725.00	$145,762.00	$147,605.00
0	94,100.00	94,474.00	93,791.00	93,573.00	95,152.00	95,595.00	97,163.00	98,165.00	99,313.00
0	60,047.00	59,608.00	59,433.00	59,054.00	59,733.00	60,009.00	61,676.00	60,399.00	61,332.00
0	$152,933.00	$162,232.00	$164,567.00	$169,011.00	$170,820.00	$172,212.00	$177,141.00	$178,405.00	$183,094.00
1	111,267.00	113,962.00	113,311.00	115,609.00	116,658.00	116,920.00	119,753.00	120,149.00	123,191.00
3	71,002.00	71,904.00	71,803.00	72,960.00	73,234.00	73,395.00	76,016.00	73,925.00	76,098.00
1	$43,263,585.00	$46,427,260.00	$50,073,852.00	$47,725,975.00	$45,585,059.00	$51,344,792.00	$51,979,464.00	$52,169,661.00	$59,204,368.00
1	24,937,605.00	26,236,961.00	30,978,065.00	29,868,714.00	28,003,542.00	31,202,795.00	32,745,450.00	33,656,612.00	36,276,824.00
3	$18,325,980.00	$20,190,299.00	$19,095,787.00	$17,857,261.00	$17,581,517.00	$20,141,997.00	$19,234,014.00	$18,513,049.00	$22,927,544.00
1	698,307.00	789,156.00	1,023,645.00	910,738.00	957,792.00	1,144,269.00	1,283,821.00	1,192,306.00	1,576,029.00
1	$17,627,673.00	$19,401,143.00	$18,072,142.00	$16,946,523.00	$16,623,725.00	$18,997,728.00	$17,950,193.00	$17,320,743.00	$21,351,515.00
1	$40,947.00	Dr. $213,159.00	Dr. $128,060.00	$396,802.00	Dr. $76,130.00	$55,125.00	$149,310.00	Dr. $81,508.00	Dr. $39,379.00
	.....	.....	.....	80,964.00	121,575.00	135,109.00	152,559.00	146,984.00	161,331.00
1	11,296.00	12,052.00	12,263.00	8,151.00	108,990.00	93,567.00	131,780.00	115,018.00	127,278.00
1	$52,243.00	Dr. $201,107.00	Dr. $115,797.00	$485,917.00	$154,435.00	$283,801.00	$433,649.00	$210,491.00	$249,230.00
1	$17,679,916.00	$19,200,036.00	$17,956,345.00	$17,432,440.00	$16,778,160.00	$19,281,529.00	$18 3,842.00	$17,531,237.00	$21,600,745.00
	.....	.....	.....	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....	.....	.....	.....
0	$68,473.00	$137,694.00	$129,842.00	$49,072.00	$49,212.00	$49,762.00	$49,620.00	$176,530.00	$208,959.00
				90,680.00	98,364.00	102,113.00	117,828.00	131,860.00	124,318.00
0	$68,473.00	$137,694.00	$129,842.00	$139,752.00	$147,576.00	$151,875.00	$167,448.00	$308,390.00	$333,277.00
0	$17,611,443.00	$19,062,342.00	$17,826,503.00	$17,292,688.00	$16,630,584.00	$19,129,654.00	$18,216,394.00	$17,222,847.00	$21,267,468.00
4	7.76	7.99	7.32	6.89	6.62	7.54	6.98	6.55	7.87
0	$17,745,807.00	$19,120,204.00	$17,864,672.00	$17,340,649.00	$16,691,362.00	$19,216,977.00	$18,281,945.00	$17,290,440.00	$21,336,219.00
9	7.54	7.78	7.18	6.75	6.48	7.31	6.81	6.40	7.61

Q. So that for the entire period from 1907 to 1913 inclusive, the different figures stated here as reflected by your books are stated in accordance with the classification of the Interstate Commerce Commission made in 1907? A. Yes, sir.

Q. Looking at item "Cost of Road and Equipment," as prepared, does that show the book cost of the property devoted to public use as reflected by the books of the various constituent companies? A. Yes, sir.

Q. Does this statement cover the Philadelphia and Reading Railway? A. Yes, sir.

Q. That is included in it? A. Yes, sir; that is included in it.

Q. And all the leased lines? A. The leased roads.

Q. All the roads which are controlled and go to make up the Reading system? A. Yes, sir.

Q. And the equipment owned by the Reading Company is also included in the statement? A. Yes, sir. And any equipment owned by the other roads, too.

Q. In the expenses have you charged anything for the rental of that equipment? A. No, sir.

Q. Going down to the net income, does that show the income from transportation service, that is, the net income earned by the property referred to as being worth the total sum of $280,342,199? A. Yes, sir.

Q. Going to the item of "working capital," how did you determine the cash on hand item? A. The cash on hand up to June 30th, 1902, we took the balance June 30th. Subsequent to that we took the balances monthly, and we took one-twelfth of that as average daily balances for the year.

Statement offered in evidence as follows:—

Cross examination.

By Mr. Kingsbury:

Q. Is this statement which has just been put in evidence one that you prepared or caused to be prepared under your direction for use by the Interstate Commerce Commission? A. Docket, 4914?

Q. I do not know the number of the docket, but in some proceeding had before the Interstate Commerce Commission. A. Yes, sir.

Q. This is the same statement? A. Yes, sir.

Q. That is now before the Interstate Commerce Commission? A. Yes, sir.

Government's counsel reserve the right to have the witness recalled for further cross examination on this statement after the Interstate Commerce Commission has passed on these matters, provided they do so while the proceedings in this suit are still pending.

Q. Did you in 1913, prepare a statement of freight charges on anthracite coal shipped, the date of payment of the same by the Philadelphia and Reading Coal and Iron Company to the Reading Railway Company, also for an answer to a question by the Interstate Commerce Commission? A. Yes, sir; that is from 1909, I think that statement was.

Q. From August, 1909, to November, 1912? A. Yes, sir.

Q. Is this a copy of it? (Statement shown witness.) A. It looks very much like it; yes, sir.

Mr. Kingsbury:—Subject to correction. I offer this statement in evidence.

(Defendant's counsel object to the statement going in as part of the cross examination. Defendant's counsel have no objection to Government's counsel putting the statement in as its own evidence.)

Mr. Kingsbury:—Mr. Auch, a former witness called by the defendant, when he was asked, "Is it not a fact that you have extended credit to the Philadelphia and Reading Coal and Iron Company for millions of dollars,

extending over long periods of time?" answered, "I do not know as to the amount or the exact period. Q. You have no data as to that? A. No, sir. That would be an accounting matter."

The statement is as follows:—

FREIGHT CHARGES ON ANTHRACITE COAL SHIPPED, AND DATE OF PAYMENT OF SAME.

PHILADELPHIA & READING COAL & IRON COMPANY.

	Date.	Total Charge.	Date Paid.		
			$100,000.00	October	27, 1909
			100,000.00	October	28
			100,000.00	October	30
1909	August.....	$469,816.45	169,816.45	November	1
			100,000.00	November	8
			100,000.00	November	16
			150,000.00	November	17
	September..	527,433.41	177,433.41	November	18
			100,000.00	November	29
			100,000.00	December	16
			100,000.00	December	20
			100,000.00	December	21
			100,000.00	December	22
			100,000.00	December	23
	October.....	729,855.70	129,855.70	December	24
			100,000.00	December	31
			100,000.00	January	3, 1910
			100,000.00	January	13
			100,000.00	January	14
			100,000.00	January	22
			100,000.00	January	24
			100,000.00	January	25
	November..	853,858.83	153,858.83	January	26
			100,000.00	January	27
			100,000.00	January	28
			100,000.00	February	1
			100,000.00	February	2
			100,000.00	February	3
	December...	746,864.35	246,864.35	February	4
			100,000.00	February	9
			100,000.00	February	11
			100,000.00	February	18
			100,000.00	February	21
1910	January....	689,430.16	289,430.16	February	25
		$4,017,258.90			

Date.	Total Charge.	Date Paid.		
Brought forward...	$4,017,258.90			
		$100,000.00	February	23, 1910
		100,000.00	February	24
		100,000.00	February	26
		100,000.00	March	2
1910 February...	651,817.62	251,817.62	March	24
		100,000.00	March	28
		100,000.00	April	4
		100,000.00	April	6
		100,000.00	April	13
March.....	465,354.88	65,354.88	April	26
		100,000.00	May	5
		100,000.00	May	9
		100,000.00	May	11
		100,000.00	May	14
		100,000.00	May	18
April.....	838,404.03	338,404.03	May	25
		100,000.00	June	3
		100,000.00	June	17
		100,000.00	June	22
		100,000.00	June	24
		100,000.00	June	30
		100,000.00	July	14
May.....	761,226.43	161,226.43	July	15
		100,000.00	August	2
June.....	573,581.60	473,581.60	September	12
July.....	371,094.39		September	30
August.....	440,904.23		October	29
		100,000.00	November	16
		100,000.00	November	17
		100,000.00	November	18
		100,000.00	November	23
September..	607,354.10	207,354.10	November	29
		100,000.00	December	15
		200,000.00	December	16
		100,000.00	December	23
October.....	659,421.32	259,421.32	December	24
		200,000.00	January	18, 1911
		100,000.00	January	19
		100,000.00	January	20
		100,000.00	January	23
		100,000.00	January	24
November..	800,362.97	200,362.97	January	25
	$10,186,779.57			

Date.		Total Charge.	Date Paid.		
Brought forward..		$10,186,779.57			
			$100,000.00	February	9, 1911
			100,000.00	February	11
			100,000.00	February	15
			100,000.00	February	16
			100,000.00	February	17
1910	December...	794,456.42	294,456.42	February	18
			100,000.00	March	1
			100,000.00	March	13
			100,000.00	March	14
			100,000.00	March	15
			100,000.00	March	20
			100,000.00	March	22
1911	January....	719,217.24	119,217.24	March	23
			100,000.00	April	5
			100,000.00	April	11
			100,000.00	April	13
	February...	527,092.70	227,092.70	April	18
			100,000.00	May	9
			100,000.00	May	10
			100,000.00	May	11
			100,000.00	May	18
	March.....	699,800.90	299,800.90	May	19
			100,000.00	May	24
			100,000.00	May	25
			100,000.00	May	27
			100,000.00	May	31
			100,000.00	June	1
	April.....	695,423.32	195,423.32	June	2
			100,000.00	June	29
			100,000.00	July	6
	May.....	749,544.55	549,544.55	July	20
	June.....	802,006.24		August	24
	July.....	562,662.49		September	23
			100,000.00	October	23
			100,000.00	October	25
			100,000.00	October	26
	August.....	482,503.86	182,503.86	October	30
			100,000.00	November	17
			100,000.00	November	18
			100,000.00	November	21
			100,000.00	November	22
			100,000.00	November	23
	September..	660,514.50	160,514.50	November	27
		$16,780,001.79			

	Date.	Total Charge.	Date Paid.		
Brought forward..		$16,780,001.79			
			$100,000.00	December	4, 1911
			100,000.00	December	13
			100,000.00	December	15
			100,000.00	December	18
			100,000.00	December	21
1911	October.....	759,049.65	295,049.65	December	22
			100,000.00	January	8, 1912
			100,000.00	January	9
			100,000.00	January	10
			100,000.00	January	13
			100,000.00	January	16
			100,000.00	January	18
	November..	807,552.07	207,552.07	January	19
			100,000.00	February	1
			100,000.00	February	2
			100,000.00	February	3
			100,000.00	February	8
			100,000.00	February	14
			100,000.00	February	16
	December...	773,158.67	773,158.67	February	17
			100,000.00	March	3
			100,000.00	March	6
			100,000.00	March	7
			100,000.00	March	11
1912	January....	710,835.69	310,835.69	March	13
			100,000.00	March	25
			100,000.00	March	26
			100,000.00	March	27
			100,000.00	March	28
			100,000.00	March	29
	February...	712,647.12	212,647.12	March	30
			200,000.00	April	19
			200,000.00	April	22
			150,000.00	April	23
	March.....	881,873.68	331,873.68	April	24
	April.....	1,040.93	.....	May	27
	May.....	166,463.46	.....	June	29
			200,000.00	August	1
			200,000.00	August	5
	June.....	775,544.51	375,544.51	August	7
			100,000.00	September	16
			100,000.00	September	17
			100,000.00	September	18
			100,000.00	September	19
			100,000.00	September	20
			100,000.00	September	21
	July.....	808,107.12	208,107.12	September	24
		$23,176,274.69			

Date.		Total Charge.	Date Paid.		
Brought forward..		$23,176,274.69			
			$100,000.00	October	15, 1912
			100,000.00	October	16
			100,000.00	October	17
			100,000.00	October	18
			100,000.00	October	19
			100,000.00	October	21
1912	August.. ..	855,900.26	255,900.26	October	22
			100,000.00	November	18
			100,000.00	November	19
			100,000.00	November	20
			100,000.00	November	21
			100,000.00	November	22
			100,000.00	November	23
			100,000.00	November	25
	September..	863,986.86	163,986.86	November	26
			100,000.00	December	16
			100,000.00	December	17
			100,000.00	December	18
			100,000.00	December	19
			100,000.00	December	20
			100,000.00	December	21
			100,000.00	December	23
	October.. ..	1,021,944.71	321,944.71	December	24
			200,000.00	January	20, 1913
			200,000.00	January	21
			150,000.00	January	22
	November..	862,483.68	312,483.68	January	23
		$26,916,591.10			

State of Pennsylvania }
County of Philadelphia. } *ss.*

I, W. H. White being duly sworn, do testify that I am Comptroller of the Philadelphia and Reading Railway Company and that the above statement of answers to Question Thirty-five (35) was prepared by me, or under my supervision and is correct, to the best of my knowledge and belief.

W. H. WHITE.

Sworn and subscribed before me this 26th day of February 1913.

C. K. Kluk,
Notary Public.

[SEAL]

Q. This is a matter that comes within your official knowledge as controller of the Reading Railway Company? A. Yes, sir.

Q. Can you tell me whether there is any other shipper of anthracite coal, or of other commodities, on the Reading Railway to whom the Railway extends credit to the same extent that is extended to the Reading Coal and Iron Company? A. I cannot just recall anybody just now.

Q. Do you know of any other shipper to whom credit in a very large amount or for a considerable period of time is extended? A. I cannot tell just now.

Q. Do you think there is any? A. We have Worth Brothers at Coatesville, who have probably sixty to ninety days on their bills.

Q. What is the largest amount of credit that was ever given to them? A. Monthly, or the balance?

Q. I want the balances. A. About $100,000.

Q. Is it your custom to require bonds from shippers to whom credit is extended? A. Yes, sir.

Q. Is it an almost universal custom with you? A. It is the general custom.

Q. Have you a regular printed form of such bond? A. We have a regular printed form.

Q. Do you require any such bonds of the Philadelphia and Reading Coal and Iron Company? A. No.

Q. Is that the only big shipper to whom you extend credit and from whom you do not require a bond? A. No; there are two or three others, Whitney & Kemmerer, and one or two others, I cannot recall their names now.

Q. Is the amount of credit extended to them anything like the amount of the balance against the Reading Coal and Iron Company? A. No, sir.

Q. Very much smaller, is it not? A. The Coal and Iron Company?

Q. No, these other shippers? A. Not as large, no.

Q. Nothing like as large as the Coal Company? A. No.

Q. Can you give me an idea of what is the largest credit extended to them? A. It is not large. $20,000 a week would cover them.

Q. How does it happen that they do not give a bond?

A. I do not know why that is the case. It has been carried that way for long before I was there.

Q. Who determines whether or not a given shipper shall give a bond? A. That is up to me—it should be up to me. We require a bond as a general thing.

Q. You found these particular shippers not giving bonds and you required no bonds from them? A. Yes, sir.

Q. Have you had any special instructions from any other officer of the Company in regard to not requiring a bond of the Reading Coal and Iron Company? A. I have not; no, sir.

Q. You have done that entirely on your own responsibility? A. That condition existed when I took the office and it has never been changed.

Q. Did you ask any questions on the subject from any one? A. No, sir; I did not raise any question.

Q. You just let the course of business run along as it had run along? A. As it had been before.

Q. Have there been any other cases in which you have changed the course of business in the matter of requiring bonds from shippers, or has the whole matter just run along as it was before? A. As it was before, yes, sir.

Q. So the only time that the question of requiring a bond has arisen has been in the case of the new shippers who had not formerly patronized the railroad? A. Yes, sir.

Q. Can you produce one of your usual printed blank forms for bonds? A. Yes, sir.

(Witness produced the following form):—

COAL FREIGHT AND TOLL BOND.

Incorporated Surety.

For a Valuable Consideration, The undersigned do hereby promise and agree to and with the Philadelphia and Reading Railway Company, that he will from time to time, and at all times hereafter, well, truly and punctually pay to the Philadelphia and Reading Railway Company all moneys which now are or hereafter shall become due by the undersigned to, or be collectible from the undersigned by, the Philadelphia and Reading Railway Company, as and for Freight,

Tolls, and Charges, or either, on Coal or Coke passing over the Railroads and Canals or in vessels, operated by the said Philadelphia and Reading Railway Company, or any part thereof, or which shall become due by the undersigned to, or be collectible from the undersigned by, the Philadelphia and Reading Railway Company for any Freight, Tolls, and Charges whatsoever, including demurrage charges to accrue from the detention of either railroad cars or vessels; and that the Philadelphia and Reading Railway Company shall have a lien on, and may at any time retake and keep possession of, any Coal or Coke, of, or carried for, the undersigned, to secure the payment of all and every sum then due and unpaid to, or to be collected by, the Philadelphia and Reading Railway Company from the undersigned, for Freight, Tolls and Charges on any Coal or Coke at any time theretofore carried on said Roads or Canals, or in vessels, and that they may at any time sell such Coal or Coke at public or private sale, without notice to the undersigned, and apply the proceeds thereof to such indebtedness;

And the undersigned do further authorize any attorney of any court of record, upon filing a copy hereof accompanied by an affidavit of an officer or agent of the Philadelphia and Reading Railway Company of the amount due under the foregoing agreement to sign an agreement for entering an amicable action, and to confess judgment therein against for such amount, and costs of suit, with release of errors and waiver of any exemption, and without stay of execution.

Witness hand and seal this day of A. D. 191 .

Sealed and delivered in presence of us:

[SEAL]

For value received, The undersigned doth hereby covenant and agree with the Philadelphia and Reading Railway Company, that the above agreement shall and will be faithfully kept and complied with on the part of the said and that if the said shall

not punctually pay the money agreed to be paid as thereby provided, not to exceed the sum of $ then the undersigned will forthwith, after such default, and without any demand, well and truly pay the same and all interest which may have accrued by reason of such default.

It being, however, hereby understood and agreed that the undersigned may at any time withdraw from liability as to future payments by the said by giving the Philadelphia and Reading Railway Company days previous notice of its intention to so withdraw.

Witness the seal of the duly attested this day of A. D. 191 .

[SEAL.]

[SEAL.]

Endorsed.—To Philadelphia & Reading Railway Company 191 . Surety Amount Expires File No. .

Q. When you do extend credit either with or without a bond, what is the usual term of such credit? A. On coal shipments?

Q. On coal shipments, and, also on general merchandise. A. They give us a bond for whatever the amount of freight is that they expect to do business for. It varies.

Q. What is the average of the time you allow them on giving such bond? A. Generally a week.

Q. You let them withhold payment for a week? A. The bill is presented on a certain day in the week, and we give them a certain time to check up, and they are expected to pay in the following week. It is practically two weeks' time before they are in shape to make payment.

Q. That is your usual course of business with shippers generally? A. Yes, sir.

Q. I see by this statement of the freight charges against the Reading Coal and Iron Company that the usual period is from two to three months in dealing with them? A. Yes, sir.

Q. And that is exceptional? A. To the others, yes.

Q. There are already in evidence in this case general balance sheets of the Philadelphia and Reading Coal and Iron Company for the years 1907 to 1912 inclusive. I find in those balance sheets an item under the head of "Current Liabilities." Take for example, balance sheet of June 30th, 1907, "P. and R. Railway Company Current Account, $1,415,104.92." Can you tell me what that is for; what that represents? A. This is a credit to the Coal and Iron Company. That is the balance of the account up to that date. That is a Coal and Iron balance sheet.

Q. Is not that the balance that was due on that date to the Railway Company? A. Yes, sir.

Q. What does that represent? What did they owe that for? A. They owed it for freights, for supplies, anything that we would furnish to them during the month, stationery or anything of that kind, on the one side, and on the other side are bills for coal adjustments on shipments over the piers. It is a general balance of the accounts due by them.

Q. This amount appears to run during these years mentioned from something under a million to about a million and a half dollars. Is that in accordance with your understanding of the situation? A. Yes, sir.

Q. Is it ever paid up to date and cleared off? A. On that other statement I showed you there, that closes up the balance of the account for the previous month maybe two or three months after—that cleans up a certain month every time.

Q. But there is always a large balance which the Coal Company owes to the Railway Company? A. It probably represents a month and a half or two months' account.

Q. Does the Coal Company ever pay any interest to the Railway Company on its debit balance? Is it ever charged with any interest? A. No, sir.

By Mr. Coudert:

Q. It falls entirely within your jurisdiction to decide whether shippers shall give bonds or not? A. Yes, sir. We require a bond from them.

Q. Since you have been in charge have you exempted any shipper from that requirement? A. No, sir.

Q. You have not taken the responsibility on yourself to exempt any shipper? A. No, sir.

Q. You only allowed those to go exempt who were exempted before you came there? A. Before; yes sir.

Q. You found them exempt and you asked no questions, but just let them alone? A. Just let them be.

Q. Just as they were? A. Yes, sir.

Q. But you did not take the responsibility on yourself of telling them that they would be exempt? A. No; I said nothing to them about it

Re-direct examination.

By Mr. Reynolds:

Q. Have you any shipper on your system that ships anything like the quantity of freight that the Philadelphia and Reading Coal and Iron Company does? A. No, sir; none at all.

Q. So that it would be impossible, in the nature of things, to have any other shipper that could possible run a credit of that amount within two months? A. Yes, sir; it would be utterly impossible.

Q. You spoke about Whitney and Kemmerer, to whom you allowed a credit. Are they shippers of anthracite coal? A. Yes, sir.

Q. I understood you to say that you did not require a bond of them? A. The bond had never been given by them, and I have never required it.

Q. Are they people of the highest financial responsibility? A. Yes, sir.

Q. Are they independent coal operators? A. Independent entirely.

Re-cross examination.

By Mr. Coudert:

Q. Were there any other shippers of anthracite exempt from giving bonds when you came in office? A. I think there are one or two others.

Q. You cannot mention their names? A. No, sir.

Q. You think there were about one or two others? A. I think that is about all.

Q. Small shippers or large shippers? A. Good sized shippers.

Q. What are they? So-called independent? A. Independent companies entirely.

Q. They are stock companies, are they? A. It is a firm name, the same as Whitney and Kemmerer. I was trying to think of the other names, but I cannot think of them just now.

Q. As far as you know, they have no relation to the Reading system? A. None whatever.

Q. No leased land or contracts in any way? A. No, sir.

Q. Do you know anything of the details in regard to them yourself? A. No, sir.

Q. You do not know anything about it, except they are exempt firms, which have been always exempt from the ordinary requirements imposed on the ordinary shipper? A. Yes, sir.

Q. Do you exempt a shipper from giving a bond because you think he is particularly solvent? A. No, sir.

Q. You have never used solvency as exemption since you have been in charge. A. No, sir.

JOHN A. TAYLOR, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your position, and with what company? A. Comptroller of the Central Railroad Company of New Jersey.

Q. Do you have any official relations whatever with the Lehigh and Wilkes-Barre Coal Company? A. None whatever.

Q. Or the Lehigh and New England Railroad Company? A. None whatever.

Q. Or the Lehigh and Hudson River Railroad? A. None.

Q. Or the Philadelphia and Reading Railway? A. None.

Q. Or the Philadelphia and Reading Coal and Iron Company? A. None.

Q. Or the Reading Company? A. No, sir.

Q. Or the Lehigh Coal and Navigation Company? A. No, sir.

Q. The accounts following 1907 in this exhibit are kept in accordance, as I understand it, with the regulations of the Interstate Commerce Commission that were promulgated in July of that year? A. Yes, sir.

Q. So that these statements on this exhibit conform to your reports to the Interstate Commerce Commission? A. Yes, sir.

Q. What have you done as to restating a period from prior to 1907? A. We restated it in so far as we possibly could to conform to the present accounting regulations.

Q. So as to make the entire statement for the entire period conform to the requirements of the Interstate Commerce Commission in their regulations of July 1st, 1907? A. Yes, sir; in so far as we possibly could.

Q. This statement shows, as I understand it, the investment value of all the properties going to make up the system of the Central Railroad Company of New Jersey, including the leased lines, but excluding the lines leased from the Lehigh Coal and Navigation Company? Is that correct? A. Yes, sir.

Q. Then when you come to the expenses, have you deducted the rentals paid for those lines in Pennsylvania? A. Only as to those where the property is not included, that is, the Lehigh and Susquehanna Railroad.

Q. How did you arrive at your working capital, which is put down here as a sum on which you attempt to earn an income? A. By drawing off daily cash balances for twenty-six times three hundred and sixty-five.

Q. Did you give the public credit for any interest that you received yourself on cash on hand? A. Yes, sir; it is so indicated in the statement.

The statement produced by witness offered in evidence, as follows:—

Q. I note that in 1910, you show a total cost of road and equipment of $81,241,375.84. A. Yes, sir.

Q. In that year was there a valuation of your properties made in New Jersey for the purpose of levying taxes, by Mr. Charles Hansel? A. There was, yes, sir.

Q. What was the appraisal which he put on that property that same year as of December 31st, 1910, so far as that property was located in New Jersey alone? A. $82,122,886.

Q. In other words, in excess of the amount you have charged for book cost? A. Yes, sir. Of over one million dollars.

Q. I asked you to prepare another statement, starting with Mr. Hansel's appraisal of your properties in New Jersey as of December 31st, 1910, and add to that the book value of the properties outside of New Jersey, and compute the net operating income after payment of taxes, and the percentage of the turn upon the investment shown in that method of computation? A. Yes, sir.

Q. Is the statement which I now hand you the computation which you have made? A. Yes, sir; it is.

Q. That is for the year ending June 30th, 1913? A. Yes, sir.

Q. Will you please file the statement with the Examiner as an exhibit?

(The witness produced the following statement:—

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

STATEMENT OF INVESTMENTS IN PROPERTY DEVOTED TO THE PUBLIC SERVICE AND THE PERCENTAGE OF RETURN FROM THE OPERATION THEREOF FOR THE YEAR ENDED JUNE 30TH, 1913.

†Hansel's Appraisal December 31st, 1910, New Jersey			$82,122,886.00
Additions and Betterments, January 1st, 1911, to June 30th, 1913:—			
C. R. R. Company's Road and Equipment		$11,246,795.24	
Proprietary Lines		420,870.97	
New York & Long Branch R. R.		298,643.05	11,966,309.26
			$94,089,195.26
Book value of property New York City Piers, December 31st, 1910	$2,397,298.91		
Additions and Betterments, January 1st, 1911, to June 30th, 1913	231,795.43	2,629,094.34	
Additions and Betterments, L. & S. Division and Branches, including Allentown Terminal R. R. and Wilkes-Barre & Scranton R. R., January 1st, 1903, to June 30th, 1913		2,538,495.44	5,167,589.78
*Total Value of Property, June 30th, 1913			$99,256,785.04
Rental, L. & S. R. R. and Branches	$2,207,703.90		
*Rental, W. B. & S. R. R.	66,606.48		
Rental, A. T. R. R.	13,500.00		
Joint Facility Rents	74,620.27		
	$2,362,430.65		
Revenues			‡$31,192,692.16
Operating Expenses		‡$19,043,652.65	
Taxes		1,578,954.70	
*Rentals		2,362,430.65	22,985,038.00
			$8,207,654.16

Percentage of Return, 8.3%.

† This item is in conformity with deposition of Charles Hansel showing a resumé of his appraisal of the Physical property of the Central Railroad Company of New Jersey, within the State of New Jersey, used for transportation purposes, which appraisal was incorporated into the return of the Company made March 1st, 1913, to the Interstate Commerce Commission in its so-called docket No. 4914. This appraisal does not include any value of the franchise, nor the value of lands held for future use.

* The Physical value of the leased lines in Pennsylvania is not included in the above exhibit. In lieu of that the rentals of those properties are deducted like taxes and operating expenses from the gross operating revenues to determine the net.

‡ Includes revenues and expenses of N. Y. & L. B. R. R. *in toto.*

Q. To what date are your statistical accounts since June 30th, 1913, brought down? A. Practically just closed up to February 28th, through the month of February.

Q. What is the comparative showing for the months elapsed during the current fiscal year as compared with the corresponding months in the year ending June 30th, 1913? A. A very decided decrease. Very decided.

Q. I understand from your answer to question number 21 in Docket 4914, that there have been no advances made by the Jersey Central to the Lehigh and Wilkes-Barre Coal Company since 1896, the date of the Reading reorganization? Is that answer true? A. Yes, sir.

Q. And that is the fact? A. Yes, sir.

Q. During that period has the Lehigh and Wilkes-Barre Coal Company always paid its freight charges? A. It has.

Q. Do the books of the Central Railroad Company show that some portions of its business are operated at a deficit? A. Yes, sir.

Q. What are some of them? A. Its lighterage business, its Harbor Terminal Transfer, its dining car service, and its Twenty-third Street ferry are some of the things that it operates at a deficit.

Q. The lines in Pennsylvania operated by the Jersey Central are owned by what company? A. The Lehigh and Susquehanna Railroad and its branches, owned by the Lehigh Coal and Navigation Company. The Wilkes-Barre and Scranton Railroad, and the Allentown Terminal Railroad are different corporations.

Q. Referring to the Lehigh and Susquehanna Railroad and its branches, what is the maximum rental provided in the lease? A. The maximum rental provides that when one-third of the gross earnings in the State of Pennsylvania amount to $2,043,000 we then discontinue paying one-third of the gross earnings and pay certain other sums as provided in the lease, one of the other items being that we have to pay back to them one-third of the rental of the Allentown Terminal Railroad, which they pay currently under the lease in what we call the maxi-

mum year, we then pay that back to them, plus a further sum of seven per cent. on addition and betterment work on the Lehigh and Susquehanna Railroad and branches.

Q. Without complicating the matter too much, the maximum result is the sum of $2,043,000 in round numbers? A. Plus those other things.

Q. What year did you reach that maximum? A. In 1901.

Q. The following year was there any interruption in the coal business, in 1902? A. We did not reach the maximum in that year, due to the coal strike, which extended over several months.

Q. That year was known as the year of the great coal strike, the John Mitchell strike? A. Yes, sir.

Q. Since that year has there ever been a year when the rental paid was not the maximum rental? A. There has not been.

Q. Take it under current conditions, about what month of the calendar year does the revenue of those lines reach a point where one-third of the gross exceeds the maximum rental? A. About the middle of August each year.

Q. So that by August each year now you reach a point where the maximum is due, and you pay that maximum and make no payments for the remaining four and a half months of the year? A. It is hard to prognosticate as to the future. Under present conditions we probably would not.

Cross examination.

By Mr. Coudert:

Q. That is a pure prophecy? A. No; my statement as to the middle of August was based on the exact facts as to 1913.

Q. But, as to the future, it is a mere prophecy? A. Certainly. If business falls off we would not do it. If it is increased, we would reach it sooner.

Q. What are your general credit arrangements with shippers? A. Our general arrangements are that a firm

will make application to us for credit. Then it is passed upon by me in its entirety, and if my investigation and judgment prompt me, I grant it. Perhaps for varying periods. It may be for a week, it may be semi-monthly, it may be monthly. As any one would in investigating a credit for a commercial business.

Q. Have you any rule about that, a thirty-day rule, for instance? A. Take for instance around New York City, we do not grant any credit in what we call the Metropolitan district for over a week.

Q. In other districts you grant a longer credit? A. We do in some cases.

Q. What are your maximum credits? A. A month—thirty days.

Q. You seldom grant more than thirty days? A. We do not ever grant more than thirty days.

Q. You do not grant more than thirty days to any shipper? A. No.

Q. You do not grant any more than that to the Lehigh and Wilkes-Barre Coal Company? A. We do not.

Q. You never have? A. I would not like to say that we never had, because I am only going back for twelve years, since the matter has been under my jurisdiction.

Q. During the twelve years it has been under your jurisdiction you have not? A. No, sir.

Q. As far as you can remember? A. As far as I can remember. I am sure we have not. When I say we grant thirty days credit, sometimes we have to pound the fellows to pay it, they get a little short of money, and, of course, everybody that is short of money dealing with a railroad company expects financial help from the railroad. But my invariable practice at the present time is to grant no credit beyond a week, and, it is only when there is an urgent reason, from my point of view, why I do not vary it from that. For instance, we have a good many industries on our road where the charges are collected in Cleveland, Pittsburgh, New York, quite a way from the agents. We have to make some little different arrangement to cover those, but never beyond thirty days.

Q. You give the Lehigh and Wilkes-Barre how much? A. Thirty days.

Q. You give them the maximum you give to anybody? A. Yes, sir.

Q. Do you, as a general rule, exact bonds as the Reading Railway does? A. The practice of exacting bonds with us exists in so far only as coal shippers are concerned, and that was brought about by the fact that at one time there were a good many people shipping coal on speculation, and we found it was necessary to inaugurate the bond system. We do not exact them from all our coal people.

Q. How long have you been doing that? A. We have been doing that I think for the last ten years.

Q. How large a proportion of shippers do you exempt from that general requirement? A. No definite number—no particular cases. If my investigation of the application of a coal shipper for credit is such that I find the same conditions as I would a man in any other line of business, I would give him the same kind of treatment, in all probability.

Q. So you do not have, as the Reading Railway seems to have, an invariable rule to exact bonds from shippers? A. No, sir. I do not exact a bond from any shipper at all, only in the case of coal shippers.

Q. And only there when you have some question as to their solvency? A. Yes, sir.

Q. Do you take bonds for the majority of them? A. No; I think not.

Q. The Lehigh and Wilkes-Barre Coal Company gives no bond, I take it? A. Gives no bond.

Q. Your railroad sometimes guarantees their bonds? A. That is a matter that does not come under my jurisdiction.

Q. As comptroller you know that to be a fact? A. Oh, yes. The bonds speak for themselves.

Q. Can you remember in a general way what is the largest debit balance that the Lehigh and Wilkes-Barre Coal Company has had on coal shipments? A. We do not carry that amount just in that way that it would indicate that.

In other words, we make the Lehigh and Wilkes-Barre pay their tolls to us, and we pay them for the coal we buy from them.

Q. Tell us just exactly how that is arranged in detail between the Lehigh and Wilkes-Barre Coal Company and the Railroad Company, how those payments are made, and what is the system? A. The Lehigh and Wilkes-Barre Coal Company is furnished with statements of its coal shipments, that is, the freight bills are furnished them, showing their shipments weekly. That is in order to give them ample opportunity to check up currently most all the accounts, so that on or before the tenth of the following month they can pay the accrued bills. As to the other side of the account, the same opportunities of checking up of the bills against us for coal that we have purchased from them, and we pay them, after verification of those bills.

Q. You get all your supply coal from them? A. No, sir.

Q. How do you get your supply coal? A. I do not think we get it all from them. I would not say now whom. Of course, we use a great deal of bituminous coal in supply coal—a great deal.

Q. You get most of your anthracite, as a fact, from them, do you not? A. I think probably we do; yes, sir. I would not say exactly all.

Q. Is their shipping account, credit account, carried just the same as all of the other shippers of coal? A. Yes, sir. We treat them all just alike. Where they have credit on similar basis, some of our coal accounts which are on our credit list, we draw on weekly for the accrued charges. Some we give weekly credit, and do not draw, they remit. Just whatever arrangement that in my judgment seems best, under my investigation of the particular case. There is no general rule laid down.

Q. You file, under the Interstate Commerce Commission, a statement as to those credits, do you not? A. Of all shippers.

Q. As to the Lehigh and Wilkes-Barre Coal Company? A. Yes, sir. Covering a period I think from August, 1909 to November, 1912.

Q. You have spoken of certain other amounts which are to be paid under the lease by the Central Railroad of New Jersey to the Lehigh and Susquehanna. Do you remember in a general way what those amounts have come to in the last two or three years? A. Yes, sir. The aggregate amount on which we pay the seven per cent. interest runs from a little over two million dollars, making about one hundred and forty-four or one hundred and forty-five thousand dollars a year on that account.

Q. In addition to the regular maximum rentals? A. Of $2,043,000; yes, sir.

Q. Are there any other payments made? A. That is all.

Q. You think it quite possible that if business does not improve you will not reach the maximum this year as in the last few years? A. It goes without saying.

Re-direct examination.

By Mr. Reynolds:

Q. When did you reach the maximum rental in the year 1913? A. In the middle of August.

Q. Do you recall how much you paid the Lehigh Coal and Navigation Company to date on the L. and S. lease this year? A. No; I do not. That is based on an estimate each month and credited on the subsequent month.

Q. How much has it been running per month? A. I would not want to say without I looked at the books.

Q. You said in answer to Mr. Coudert's question that you were not going to reach the maximum? A. No; I said if business continued to fall off, we would not reach the maximum.

Q. If business continues where it is, will you reach the maximum? A. It would be necessary for me to see what we paid for January and February before I could answer that question.

Q. Then how did you answer Mr. Coudert's question? How much would it have to fall off? A. It would have to fall off very considerably.

Q. How much? A. I cannot tell that unless I knew what one-third of the gross earnings for the whole year 1913 was.

Q. Then your answer is that if the gross earnings fall below $2,043,000 you will not reach the maximum? If one-third of your gross earnings this year does not reach $2,043,000 you will not reach the maximum? A. Certainly.

Q. That is all your answer means, is it? A. Yes, sir.

W. G. BESLER, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your position, and with what company? A. Vice-President and General Manager of the Central Railroad Company of New Jersey.

Q. What year did you go to the Central Railroad Company of New Jersey? A. In 1902.

Q. In what position? A. As General Manager.

Q. With what company had you been employed before that time? A. The Philadelphia and Reading.

Q. In what position? A. General Superintendent.

Q. How long had you been with the Philadelphia and Reading? A. Two and a half years approximately.

Q. Where did you come to that company from? A. From the C. B. A. & Q.

Q. Are you familiar with the Drifton branch of the Central Railroad of New Jersey? A. Yes, sir.

Q. Where does it begin and end? A. At Drifton Junction, up at Drifton, Pennsylvania.

Q. It ends there now? A. Yes, sir.

Q. How long is it? A. About twelve or thirteen miles.

Q. Does it move any coal? A. None whatever.

Q. How long since it ceased to move coal? It would be a matter of hearsay with me, but it has been over twenty-five years.

Q. In the operations of the Central Railroad of New Jersey, are those operations in any manner directed by the Philadelphia and Reading Railway? A. None whatever.

Q. What is the general character of the shipments han-

dled over the North River Coal and Wharf Company property at Jersey City? A. Bituminous coal.

Q. Any coke handled there? A. Very little, if any.

Q. Do you remember what the Delaware, Susquehanna and Schuylkill Railroad was? A. In a general way; yes.

Q. What was it, and where did it run? A. It was an operation under the ownership of Coxe Brothers, as I understand it, and extended in the coal regions up through the coal regions.

Q. Did it come anywhere near your Drifton branch? A. One section of it was terminated at Drifton, I believe.

Q. Do you remember when the Lehigh Valley acquired the Coxe Brothers' property? A. I think seven or eight years—yes, seven or eight years ago.

Q. In the case for the Government, certain tables were filed showing the routing of coal in 1901 and 1913, and those statements generally show a very much larger tonnage moving via the Lehigh and Hudson River Railway and the Central New England Railroad, and the New York, New Haven and Hartford Railway in 1913 than moved via that route in 1901. Can you state what explanation there is for that difference in routing? A. It was forced upon the Central Railroad by action of the New York, New Haven and Hartford Company. The New Haven acquired what is known as the Poughkeepsie bridge route, and in order to stimulate traffic via that highway, as well as to relieve their rush congested conditions in and about New York, directed that we send our coal traffic and freight traffic by the Poughkeepsie bridge route, which took it from the main line at Phillipsburg.

Q. The Government has filed certain maps in this case, upon which the map maker has shown a railroad running down from Lansford and connecting with the Jersey Central main tracks at the Mauch Chunk station. Where is the Switchback, so-called railroad, located? A. On the mountains back of Mauch Chunk.

Q. About what altitude above the tracks of the Jersey Central at Mauch Chunk? A. Four hundred to six hundred feet.

Q. What is the nature of that railroad in its service to the public? A. A roller coaster in effect, a scenic railroad.

Q. Does it carry any trade? A. None whatever.

Q. Excepting joy-riding? A. Excursionists.

Q. I call your attention also to a letter of yours which was put into the record in a garbled and mutilated form on page 343 (printed page 175), which you addressed to Mr. Baer. Have you a complete copy of that letter with you? A. Yes, sir. (Copy of letter produced dated January 28th, 1907.)

Q. They left out the introduction of that letter in putting it in, that reading as follows: 'I dislike to have to take up with you matters which are ancient history, but the adage that 'The man convinced against his will is of the same opinion still,' finds its application in my case. The United States Metals Refining Company, located on our New Jersey Terminal R. R. (which was formerly the De Lamar Copper Refining Co.) have had up with us, as you know, from time to time the matter of securing a sufficient supply of No. 3 Buckwheat coal, of which they require about 5000 tons per month." Then the letter continues as stated in the record, and then the Government has left out this, "This arrangement expires on April 1st, and the L. & W. B. Co. have been advised by the Lehigh Valley Coal Co., that they cannot continue that arrangement. Thereupon the U. S. Metals Refining Co., made direct application to the L. V. Coal Co. people to supply them with the coal, which the Lehigh Valley Coal Co. have declined to do." The letter then continues as in the record. Then the Government has left out this paragraph, "If we fail in this there is nothing for these people to do but to immediately undertake to construct dock facilities at Cartaret and arrange for their supply by water. This, as you know, is always possible, and all of the companies furnishing coal may then come into our territory with their coal barges and take from us not only this small size anthracite, but also the large bituminous tonnage which we have worked up in connection with this concern."

Those interpolations that I have read complete that letter, do they not? A. Yes, sir.

Mr. Reynolds offered in evidence the letter identified by the witness as follows:—

"JANUARY 28th 1907.

"Supply of No. 3 Buckwheat Coal for United States Metals Refining Company.

"Mr. Geo. F. Baer, President, Philadelphia, Pa.

"DEAR MR. BAER:—I dislike to have to take up with you matters which are ancient history, but the adage that:—

> 'The man convinced against his will,
> Is of the same opinion still,'

finds its application in my case.

"The United States Metals Refining Co., located on our New Jersey Terminal R. R., (which was formerly the De Lamar Copper Refining Co.,) have had up with us, as you know, from time to time the matter of securing a sufficient supply of No. 3 Buckwheat coal, of which they require about 5000 tons per month.

"Several months ago, you will remember you gave instructions to Mr. Henderson to send in an emergency supply from the P. & R., which was lying at Port Reading, meantime we exerted ourselves and Mr. Heilner secured from the Lehigh Valley Coal Co., a supply of coal to apply on their requirements. This arrangement expires on April 1st, and the L. & W. B. Co. have been advised by the Lehigh Valley Coal Co., that they cannot continue that arrangement. Thereupon the U. S. Metals Refining Co., made direct application to the L. V. Coal Co. people to supply them with the coal which the Lehigh Valley Coal Co. have declined to do.

"They now turn to us to see whether it is not possible to secure a supply from the Reading territory, and it is to this line of action which I would now endeavor to secure favorable consideration. If we fail in this there is nothing for these people to do but to immediately undertake to construct dock facilities at Carteret and arrange for

their supply by water. This, as you know, is always possible, and all of the companies furnishing coal may then come into our territory with their coal barges and take from us not only this small size anthracite, but also the large bituminous tonnage which we have worked up in connection with this concern.

"If our affiliation with the Reading Co. is to be of benefit to this property; it should be in such case as this, where to protect our traffic and direct earnings the P. & R. should come to your assistance and enjoy thereby their indirect earnings from their traffic, as well as their direct earnings from the sale of the coal.

"Undoubtedly the Reading Company can show a number of reasons why they cannot consistently do this, but rules are made to be broken by the authority which creates them, and in this matter I trust you will give instructions which will enable us to take care of this very large customer.

"The matter is of such importance that it requires immediate attention, and we must give a definite answer by Wednesday of this week.

"Yours truly,

"(Sgd.) W. G. BESLER.
"Vice Pres. & Gen'l. Mgr."

"Mr. T. B. Koons:—

"Note: for your information.

W. G. Besler."

(original V. P. & G. M. file No. 8428)"

Q. What is the nature of the coal supply on the Jersey Central system in the size of number three buckwheat coal? A. There is insufficient supply for the demand.

Q. Is an order of five thousand tons per month, or sixty thousand tons per annum, a whale of an order of number three buckwheat coal? A. I would so consider it.

Q. Are there many industrial enterprises along the Jersey Central consuming buckwheat coal? A. Yes, sir.

Q. And bituminous coal? A. And bituminous coal.

Q. Is there any independent shipper upon the lines of

the Central Railroad of New Jersey, other than the Lehigh Coal and Navigation Company, which could ship 60,000 tons of buckwheat number three, as far as you know? A. No, sir.

Q. So that the reason for that letter was, as you stated, in the parts I have read, an effort to get the shipments of coal for your own line? A. Yes, sir.

Q. On page 347 of the record (printed page 176) the Government has put in what does not purport to be a letter at all, but is dated January 25th, 1909. Have you a letter of that date? A. Yes, sir. (Letter produced.)

Q. What was the explanation of your writing that letter to Mr. Koons? A. The same general purpose as the former letter, to secure to the Jersey Central profitable tonnage.

Q. How was that coal moving at that time? A. By the Lehigh Valley.

Q. Where were they getting it? A. I understand from the P. & R.

Q. What shipments from what points on your line give you the longest haul on anthracite coal? A. Anthracite from the Wyoming region.

Q. And the best rate? A. And the best rate.

Q. Was it to your advantage to get shipments from that region? A. Absolutely.

Q. What was the result in getting the tonnage delivered via either the P. & R. or the Lehigh Valley, thence to your line? Would you get the long haul and the full rate? A. No.

Q. Then what was the object of your letter? A. To endeavor to secure the long haul and the through rate, the entire rate.

Q. Without sharing with the P. and R. or the Lehigh Valley? A. Yes, sir.

Q. Does the Central Railroad Company of New Jersey reach any of the collieries of the Temple Iron Company? A. No.

Q. How many railroads now serve the Wyoming region? A. The Pennsylvania Railroad, the Lehigh Valley,

the D. L. and W., the New York, Ontario and Western and our Central Railroad of New Jersey, and the Delaware and Hudson.

Cross examination.

By MR. COUDERT:

Q. You say the Philadelphia and Reading Railway has had nothing to do with the management of your company, as I understand you? A. Absolutely.

Q. What do you mean by the language, "If our affiliation with the Reading Company is to be of benefit to this property." What did you mean by affiliation? A. Working arrangement.

Q. What did you mean by working arrangement? A. The interchange of traffic, movement back and forth.

Q. How were those working arrangements shown, evidenced; by contracts? What documents showed that those working arrangements, which you called affiliation, existed? A. The joint tariffs.

Q. What else? A. The joint movement.

Q. What was that general movement predicated on? A. Movement between the two properties.

Q. The fact that the two properties were one, that was what you intended, was it not? A. No, sir.

Q. What did you mean by "affiliation?" You know what "affiliation" means? A. Yes, sir.

Q. What did you mean by "affiliation?" A. If our working arrangements with the Reading should be substituted, perhaps, if you want to get at the meaning of them.

Q. Did you have affiliations with other companies? A. Yes, sir.

Q. What were the other companies with which the Central was affiliated at that time? A. The D. L. and W., the Lehigh Valley, all of the railroads with whom we have similar working arrangements for through routes and rates.

Q. You were aware at that time, of course, that the Reading system owned the Central, were you not? You knew that? A. That they held an interest in the stock?

Q. Yes. A. Yes, sir.

Q. Did you not have that in mind when you said "affiliation?" A. Oh, no.

Q. Do you mean to say that that did not enter into your mind as one of the factors when you spoke of those two roads as affiliated? Would you consider roads as strangers when one owned the other? In your mind did not that create any relation between them? A. Not in the sense that you are trying to construe it, no.

Q. So that when you said they were affiliated you meant they might be affiliated as any roads might be that had arrangement for through traffic? Is that what you meant? A. Absolutely.

Q. You said in one of your letters, "It was our understanding that the P. and R. anthracite coal could not come over into C. R. R. territory without disturbing L. and W. B. arrangements." What were those arrangements? A. As between Mr. Koons and myself, he is responsible for earnings and myself responsible for expenses, that we should endeavor to secure that traffic which would give to us the largest earning and the greatest haul.

Q. So that that was just a gentlemen's arrangement between himself and yourself? A. Oh, yes.

Q. What kind of an arrangement was it? A. Verbal discussion.

Q. It was a verbal arrangement? A. Yes, sir.

Q. A gentlemen's arrangement? A. Yes, sir.

Q. And under that gentlemen's arrangement you each had your own territory? A. Jurisdiction.

Q. I am speaking of the arrangement between the two railroads which you referred to in your letter to Mr. Koons. You say here, "without disturbing Lehigh and Wilkes-Barre arrangements." A. Yes, sir.

Q. I do not understand what you meant by that? A. I just told you; that we might get the benefit of the greater earnings which the Lehigh and Wilkes-Barre traffic affords to us.

Q. How would you get those benefits? A. By securing the traffic.

Q. How would you secure that traffic? What did you do to secure that traffic? A. Nothing so far as I was concerned.

Q. You got it without making any effort, did you not? A. Mr. Koons secures the traffic.

Q. You got it without the slightest effort? A. It was routed our way.

Q. What do you mean by saying that it was your understanding that the Reading coal could not come into your territory? What was to keep it out? Who promised you not to send it into your territory? A. Nobody.

Q. What agreement was there not to send it into your territory? A. None whatever.

Q. Then on what was the understanding based? A. That Reading coal coming into our territory would displace the long haul of the L. and W. B. which we might otherwise enjoy.

Q. "It was our understanding," that is to say Mr. Koons and yourself understood that for some reason or other the Reading coal could not come into your territory? What was that understanding based on? It must have been based on something? A. Decreased earnings that we would enjoy

Q. Do you mean to say that your understanding was not based on any arrangement of any kind? A. Absolutely none—none whatever.

Q. You say, "It was our understanding that the anthracite could not come over into the territory." What was to prevent it coming? A. Nothing, as far as I was concerned.

Q. So that your letter practically amounts to nothing? A. Yes, sir.

Q. What year were you transferred from the Reading to the Central? A. In 1902.

Q. What month? A. I think it was in March.

Q. How did you happen to be transferred? A. The Vice-President in charge had resigned and I was sent over.

Q. You were sent over by whom? A. By Mr. Baer.

Q. And he was President of the Reading and of the Central? A. Yes, sir.

Q. And he transferred you from one to the other? A. Yes, sir.

Q. Did he state in which capacity he was acting when he transferred you? Was he dual or single? A. The notice was signed as President of the Central Railroad of New Jersey.

Q. When he transferred you from the Reading, as President of the Central, he transferred you from the Reading to the Central? A. I was directed to go to the Central.

Q. By Mr. Baer, as President of the Reading? A. I do not know in what capacity he was acting. You will have to ask him.

Q. He was acting as the great Poobah, was he not? Was not that the fact? A. I do not know.

Q. He was President and he told you to go from one of his roads to the other? A. Yes, sir.

By Mr. Kingsbury:

Q. There is already in the record as an exhibit a letter appearing to have been written to you by Mr. Koons, dated October 16th, 1906, page 312 (printed page 160). Refresh your memory by reading it. Do you remember that letter? A. No; I do not.

Q. You do not remember receiving it? A. I may have received it. I do not remember it.

Q. You do not remember then what you answered? A. I could not remember; no.

Q. Do you concur in the views expressed by Mr. Koons in that letter? A. I would want to think about it before I answered.

Q. You are not prepared to answer that now? A. No, sir.

Q. Mr. Koons says in this letter, "It would be most disastrous to all the anthracite coal roads," referring to a proposed reduction by one of them, "as they were all interested and would have to meet the reduction if he would establish lower basis." Do you concur in that? A. That is handled by Mr. Koons, and I prefer he should answer. I would not answer that.

Q. You do not know then whether it would have that effect? A. I would not care to express an opinion.

Q. You will not even say whether you know or do not know? A. No.

ROBERT L. RUSSELL, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your position, and with what railroad? A. General Freight Agent, Philadelphia and Reading Railroad.

Q. Do you have anything to do with coal? A. I do not have anything to do with coal or coke.

Q. Your jurisdiction is entirely over merchandise? A. Yes, sir.

Q. The Government put in another one of their garbled letters, all chewed up, page 341 of the record (printed page 173), leaving out matters which would otherwise explain the reference, and you are referred to by the writer of that letter, T. J. Fretz, of the Lehigh and New England Railroad, as having made a "peculiar reservation, stating that in case policy reasons interfered with this arrangement the matter would be off." What were you discussing with Mr. Fretz at the date of that letter, August 21st, 1912? A. Mr. Fretz comes down to see me every now and then, ——

MR. COUDERT:—In view of the rather unpleasant statements that counsel has made, I request that he put in all these letters which are his and in his possession.

(Mr. Reynolds produced copy of letter dated August 21st, 1912.)

By MR. REYNOLDS:

Q. The omitted part of the letter reads as follows: "I called on the Philadelphia & Reading people yesterday relative to rates and divisions to and from our new extension and the Panther Creek Road; the attitude of the Freight Traffic Department of the Reading was entirely at variance with information they heretofore gave their connections on suggested alignment of new tariffs to and from these points. Mr. Russell, G. F. A., and Mr. Boggs, A. G. F. A., both advised me that so far as they knew, they were not only willing, but anxious to interchange traffic with us through the Tamaqua Gateway on the same basis of divisions as we

made with our other connections, namely, 40 mile blocks with a minimum revenue of 20%. They stated that they would want to put in their whole line through Tamaqua and intimated that they then proposed to cut out the short line, Lehigh Valley and C. R. R. of N. J. routes, they being anxious to not only include our new points, but also our old territory. So far as Central Freight Association and Trans-Continental traffic is concerned, they want to handle such traffic, both East and Westbound via the same junction point, and are apparently willing to give us arbitraries of 3½ cents in carloads and 5 cents less carloads. They stated that their fast freight service from Philadelphia would land our cars at Tamaqua by midnight, thus giving us ample opportunity to spot cars at the Lansford platform for early morning delivery. They seem very anxious to ascertain the exact location of our Tamaqua freight station, which of course I was unable to give them." Were you very anxious to make those joint arrangements with them, and did you do all those things that they state in that omitted part of the letter in an effort to accommodate them in the general freight traffic? A. As I said, Mr. Fretz comes down to see me every now and then and I cannot recollect, of course, what took place at each conference that he has had with me in the past two or three years, but I do recall that he had an interview with me about the time that their new extension was completed into Tamaqua and about the time that they were contemplating taking over the line up to Lansford and that vicinity, and at one of those conferences, whether it was at the one just prior to the writing of this letter I could not of course state, but at one of those conferences he discussed the question with me of a division, and also the question of him being willing to interchange the freight at Tamaqua, and I did tell him that there was no reason why we should not interchange the traffic at Tamaqua for this new line and for this part of the road that he contemplated taking over.

Q. And were the interchange arrangements made? A. Those were subsequently made. He referred at that time particularly to the question of division on cement traffic,

which by the way is the largest traffic that they originate, and which comes to our line, and which traffic we had been handling via Slatington. He discussed with me the cement proposition of handling the cement via Tamaqua instead of via Slatington. Also some allowances on joint business of the Central Freight Association territory business routing via Tamaqua. I listened carefully to what he had to say, and as I now recall it, he wanted me to give him about sixty cents a ton on the cement, which was a great deal more than we had been paying up to Slatington and a great deal more than he got in connection with any of his other lines, the Lehigh Valley, the Lackawanna and so forth. He also referred to this allowance of two and a half cents, I think it was, on carloads as an arbitrary proposition going through there.

Q. All this had relation to merchandise freight and general interchange? A. Entirely; yes, sir.

Q. Could you agree as to the divisions for your connections to the West? A. Not at all.

Q. Did you have to refer any such question to the lines west? A. Oh, yes.

Q. What does this refer to, "Mr. Russell made a peculiar reservation stating that in case policy reasons interfered with this arrangement the matter would be off." To what did that refer? A. I have no recollection of having used the word "policy." If I did use it, it referred entirely to the business policy of creating divisions with his line. In no sense to any managerial policy of the railroad.

Cross examination.

By Mr. Coudert:

Q. Who was Mr. Fretz? A. He is General Freight Agent of the Lehigh and New England Railroad Company.

Q. The Lehigh and New England Railroad Company, is a defendant in this case and defended here by counsel? A. I do not know.

E. B. CROSLEY, having been recalled, was examined as follows:—

By MR. REYNOLDS:

Q. In the letter which I have just read to Mr. Russell, Mr. Fretz, on page 341 (printed page 174) says, "so far as the shipments from the East Lehigh Colliery" and so forth, then a long omission, "their operating and legal departments were looking into the legality of our company arbitrarily removing this connection." Then with more omissions, "and they did not feel that this action on our part was very friendly and so forth." Then with a lot of more omissions, "the general tone of Mr. Crosley's conversation, to say the least, was decidedly unfriendly on these matters." Do you remember that discussion with Mr. Fretz? A. I remember a discussion with Mr. Fretz. Whether it occurred at that time or not I cannot say, but it was probably about that time.

Q. Referring to the East Lehigh Colliery as this exhibit does, the omitted part shows that the Philadelphia and Reading Railway Company had a track into the East Lehigh Colliery and you were discussing, according to the next omitted paragraph of the letter, the restoration of the original physical connection with that colliery. Who removed that connection? A. The Lehigh and New England Railroad.

Q. Under what circumstances? A. I cannot tell you the circumstances, excepting that it was without any notice whatsoever to the Philadelphia and Reading Railway Company, as I understand it, it was done at night, or on Sunday, or some other time. The first we knew was when the connection was destroyed by the construction force of the Lehigh and New England Railroad. I am not sure it was done by the Lehigh and New England Railroad—it might have been a construction company. But, it was done by whoever were removing their road into Tamaqua.

Q. And the Reading siding just ripped out? A. Yes, sir.

Q. You were unfriendly about this kind of treatment, were you? A. I certainly was.

Q. That is what you were unfriendly about? A. I certainly was.

Q. Do you still feel as though that was an unfriendly act? A. I still feel the same way. I had no reason to change my views on that.

MR. REYNOLDS:—Inasmuch as the Government does not put in the full letter, I will put it in evidence at this point.

The letter identified by the witnesses is as follows:—

"LEHIGH AND NEW ENGLAND RAILROAD COMPANY.

"BETHLEHEM, PA., Aug. 21, 1912.
File B-148, C-11, C-14.

"Mr. Rollin H. Wilbur, Vice Pres. & Gen. Mgr., Philadelphia, Pa.

"DEAR SIR:—I called on the Philadelphia & Reading people yesterday relative to rates and divisions to and from our new extension and the Panther Creek Road; the attitude of the Freight Traffic Department of the Reading was entirely at variance with information they heretofore gave their connections on suggested alignment of new tariffs to and from these points. Mr. Russell, G. F. A. and Mr. Boggs, A. G. F. A., both advised me that so far as they knew, they were not only willing but anxious to interchange traffic with us through Tamaqua Gateway on the same basis of divisions as we made with our other connections, namely, 40 mile blocks with a minimum revenue of 20%. They stated that they would want to put in their whole line through Tamaqua and intimated that they then proposed to cut out the short line, Lehigh Valley and C. R. R. of N. J. routes, they being anxious to not only include our new points, but also our old territory. So far as Central Freight Association and Trans-Continental traffic is concerned, they want to handle such traffic, both east and westbound via the same junction point, and are apparently willing to give us arbitraries of 3½ cents in carloads and 5 cents less carloads. They stated that their fast freight service from Philadel-

phia would land our cars at Tamaqua by midnight, thus giving us ample opportunity to spot cars at the Lansford platform for early morning delivery. They seem very anxious to ascertain the exact location of our Tamaqua freight station, which of course I was unable to give them.

"Mr. Russell made a peculiar reservation, however, stating that in case policy reasons interfered with this arrangement, the matter would be off.

"I called on Mr. Crosley relative to coal matters, who stated to me that they could not consider making any changes in the present method of handling Lehigh Coal & Navigation coal—that he understood there is no change in the situation, so far as the dealing between the Lehigh Coal & Navigation Co. and the Philadelphia & Reading Ry. is concerned, and intimated that he did not believe that either the Lehigh & New England R. R. or the Lehigh Coal & Navigation Co. desired to do anything detrimental to the interests of either party.

"So far as the shipments from the East Lehigh Colliery are concerned, he stated that his company had a track into this colliery, and that their operating and legal departments were looking into the legality of our company arbitrarily removing this connection; that they did not feel that this action on our part was very friendly, and in case they could not restore their original physical connection with the above colliery, they would simply withdraw in the handling of this traffic. The general tone of Mr. Crosley's conversation, to say the least, was decidedly unfriendly on these matters. I suggested to him, that in case we could not get a reasonable arrangement with them, it might just be possible that we would be compelled to use some other methods, which did not seem to disturb him much. He claims that the revenue accorded to the Lehigh Coal & Navigation Co. on local Intra-State shipments is not intended as an Operating revenue only, but he stated it is linked up with trackage and other matters between the Reading Company and L. C. & N. Co.

"So far as proportionate rates to Milton and Harrisburg are concerned, he stated that this was a strictly Intra-State

situation; that the coal was all consigned to the Susquehanna Coal Company at either of these points, freight charges being prepaid, and that there was no Interstate rates effective from any Philadelphia & Reading stations to western points in connection with the Pennsylvania Railroad and intimated that there would be none without a struggle.

"It is evident to my mind that, at least so far as coal is concerned, the policy of the Philadelphia & Reading Railway has not been changed, and that the attitude of Mr. Crosley is dictated by his executive, and that undoubtedly the same stand would be taken by other anthracite carriers on any proposition, looking towards the installation of proportionate rates up to the Pennsylvania Railroad Junction.

"Yours truly,

"(Sgd) T. J. FRETZ,
"General Freight Agent.

"Fk."

Q. On page 335 of the minutes in this case, running to 340 (printed pages 171-173), there are some letters exchanged between yourself and a Mr. F. E. Herriman, the coal traffic manager of the New York Central and Hudson River Railroad Company. Do you remember those letters? A. That is in reference to the rate to Buffalo. This is principally the circumstances in connection with that correspondence.

Q. Is it true or not that all that correspondence simply had to do with the form of a tariff? A. Absolutely. Mr. Herriman thought there were certain things required in the tariff which I did not think were required. That is the sum and substance of that correspondence. That is all there is to that.

Cross examination.

By Mr. Coudert:

Q. You mean a certain amount? A. No, certain notations which he thought should appear on the tariff, and which we thought should not.

Q. Were they charges for trans-shipment? A. They had to do with the trans-shipment rate.

Q. Dock charges? A. I will explain that. We had carried a rate to f. o. b. vessels at Buffalo, which rate was twenty-five cents a ton higher than the local rate to Buffalo, and that twenty-five cents was allowed for the service on trans-shipping the coal into vessels. Therefore, what the Philadelphia and Reading Railway and the New York Central received out of the joint rates was simply the local rate and I thought that it was proper to eliminate that f. o. b. vessel rate, because it meant nothing, and I asked Mr. Herriman whether under our established rate to Buffalo a delivery would not be made by his company to the plant of the coal dock just in the same manner as a delivery would be made to a local dealer in the city of Buffalo, and he said that it would.

Q. But from his company to a local dealer? A. Going from the dock company to a local dealer. Making the same delivery to the dock company that would be made to a dealer's yard in Buffalo.

Q. Without any charge? A. Certainly, under the tariff rate. I do not mean over the dock. I mean a delivery to the dock, or, rather, at the foot of the dock.

Q. That is an unloading delivery of the car? A. No; just a delivery of the car, placing the car on the siding. And he said that it would.

Q. That it would what? A. That the established rate to Buffalo would cover that service. That there was no more service in fact than would be given in delivering on the siding of a manufacturer or any one else in Buffalo.

Q. Whose dock was that? A. I cannot remember the owner of the dock.

Q. You do not remember to whom it belonged? A. I do not know to whom it belonged. I do not know the ownership of the dock at all.

Q. It did not belong to the Reading? A. No, sir. Which Reading do you mean? The Philadelphia and Reading Railway?

Q. Any Reading. A. Not so far as I am aware. It did not belong to the Philadelphia and Reading Railway.

Q. Or to the Coal Company? A. I do not believe that it did.

Q. But you do not know, do you? A. I think I am safe in saying that it did not, but I would not want to say that officially.

Q. But you are not sure? A. No, sir.

Q. Why did you charge twenty-five cents trans-shipment in Buffalo, and forty cents in New York? A. We do not.

Q. What is the fact about that, to your knowledge? A. The twenty-five cents and the forty cents are entirely separate; one has nothing to do with the other whatever. I do not know what you mean by the allowance of forty cents to New York. We do not allow forty cents at New York for trans-shipment on coal.

Q. What do you allow? A. We do not allow anything. Our rate there is f. o. b. vessels.

Q. How about the Buffalo trans-shipment? A. Formerly it had been f. o. b. vessels.

Q. Now it is what? A. Now it is simply the local rate to Buffalo and the shipper or consignee, or whoever may be the proper party, pays the expenses of trans-shipment of the coal.

Q. And that is twenty-five cents? A. I do not know what it is now.

Q. What does this mean, "The above rates on the Port Reading, New Jersey road are subject to a reduction of forty cents per ton shipping allowances at tide, the total of which is paid by P. & R. Railroad out of its proportion of the gross rate?" A. I do not know what that means.

Q. Look at it. A. This is what? I do not know whose exhibit this is.

Q. I ask you the fact. A. The fact of the matter is that there are certain rates published to Port Richmond, local rates, with the Philadelphia and Reading—I will give you just as an example—and when the coal goes into a vessel, the rate is reduced by an amount which appears on the tariff, thereby reducing the rate to a proportional rate because the coal moves beyond by vessel. The same thing applies here.

Q. Is that what that forty cents means? A. Absolutely.

It merely reduces this to a net rate of $1.55 f. o. b. vessels at Port Reading.

By Mr. Reynolds:

Q. It just makes the net rate? A. The Port Reading rate is $1.55 f. o. b. vessels.

By Mr. Coudert:

Q. What does this mean, referring to page 392 (printed page 193) "P. R. R. Railway tariff Interstate Commerce Commission? A 432, taking effect September 13th, 1912, allowances, prepared sizes forty cents, pea coal, buckwheat and buckwheat number two, all forty cents. What does that mean? A. That reduces the rate to Port Reading to a f. o. b. vessel rate, to a proportional rate.

Q. Are those allowances, as you call them, uniform in various places; for instance, if you ship to Buffalo to be put on a vessel, what allowance do you make there? A. No, sir. That allowance merely establishes the net f. o. b. rate at Port Reading.

Q. And is different at various places? A. Yes, sir. It may be. For instance, we want to establish an $1.55 rate F. O. B. vessels at Port Reading. If that rate were $2.00 a ton, and we wanted an F. O. B. rate of $1.55, the deduction instead of being forty cents, would be forty-five cents. If the rate to Port Reading was $1.70, and we wanted an F. O. B. rate of $1.55, the allowance would be fifteen cents instead of forty. That forty cents has nothing whatever to do with shipping expenses or for the services of putting the coal over the dock, or anything of that sort. It merely establishes an F. O. B. rate of $1.55.

Q. And that forty cents is included in the $1.55? A. No.

Q. It would be forty cents plus $1.55? A. Yes, sir. The rate is $1.95, forty cents off of that makes the F. O. B. rate on prepared sizes just $1.55.

Q. Look at that statement, answer to Question No. 31, Interstate Commerce Commission proceedings, and tell me what that item fifty-one thousand is? A. That is at Port Richmond. That means that the Philadelphia and Reading Coal and Iron Company and its various other shippers

have on the coal as it is shipped to Port Richmond paid the local rate, which is what we require that they shall do,—the local rate which applies to Philadelphia.

Q. That is the through rate plus the forty cents? A. This is Port Richmond, not Port Reading. They have paid the local rate just the same as though that shipment was delivered on the tracks at Philadelphia. Then when that is dumped into a vessel, showing that the coal then becomes properly subject to a proportional rate, there is refunded to them the difference between the local rate and the proportional rate, all of which is covered by the tariff. This is no more nor less. A shipment may be consigned, we will say, from Philadelphia to Buffalo at a local rate—any commodity. We will say that rate is $3.00 per ton. That shipment may be re-consigned to Chicago, where the rate is $5.00 per ton, but the proportion for a Buffalo out of a Chicago rate is $2.50 instead of three, as the local rate is. Now, if a shipper has prepaid the freight to Buffalo at $3.00 per ton, and re-consigns it to Chicago, he is clearly entitled to a refund of fifty cents a ton, because he is entitled to the through rate based on the proportion which should apply out of the through rate for a Buffalo as against the local rate. That is all the Port Richmond has to do with it. It has nothing to do with trans-shipping expenses or anything else.

(Adjourned to meet at No. 143 Liberty Street, New York, Tuesday, April 7th, 1914, at eleven o'clock A. M.)

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143 Liberty Street,
New York City, April 7th, 1914.
11 o'clock A. M.

Present.—The Examiner. Messrs. Coudert and Kingsbury, special assistants to the United States Attorney-General, for Government. Messrs. deForest and Reynolds, representing defendants.

Mr. DeForest:—I offer in evidence certified copy of the charter of the Central Railroad Company of New Jersey and its supplements. I call attention to the fol-

lowing portions thereof, which I offer to be printed in the record with the understanding, in the case of this and any other exhibits offered, that counsel for the other side may take the same course with regard to any parts of those exhibits which they wish to have deemed in evidence.

"An Act to incorporate The Somerville and Easton Railroad Company," approved February 26th, 1847, P. L. of N. J., 1847, page 128.

Section 6 thereof authorized the construction of a railroad from the village of Somerville to the Delaware River opposite to the village or borough of Easton in the State of Pennsylvania.

Supplement to its charter approved February 22d, 1849, P. L. of N. J., 1849, page 90.

Section 1 thereof authorized the purchase of the Elizabethtown and Somerville Railroad constructed under an Act passed February 9th, 1831, P. L. of N. J., 1831, page 333.

Section 3 thereof provided that when said purchase should be made the railroad so purchased should be and become a part of the railroad authorized to be constructed by the Somerville and Easton Railroad Company, and thereafter the said company should be known by the name of The Central Railroad Company of New Jersey.

Further supplement to its charter approved March 17th, 1854, P. L. of N. J., 1854, page 524.

Section 1 authorized said company "to erect, build or extend such wharves, docks, or piers opposite to and adjoining any lands owned by them in the township of Elizabeth, as far in the sound or bay as may be necessary for the purposes of facilitating the transshipment of coal, and their general transporting business and also to have and hold whatever wharves, piers, lands or lots, steamboats, sailing vessels and such other facilities, in the City of New York, or elsewhere, as may be necessary for the management of their business."

Section 3 authorized said company to purchase or lease

or operate any railroad which might connect with or intersect its road.

The company duly filed in writing its assent to and acceptance of all the provisions of this Act in the office of the Secretary of the State of New Jersey on June 5th, 1854.

Further supplement to its charter approved February 23d, 1860, P. L. of N. J., 1860, page 157.

Section 1 authorized said company to extend its railroad from Elizabeth to a point on New York Bay in the County of Hudson at or south of Jersey City.

Section 2 authorized it to construct a bridge over Newark Bay.

Further supplement to its charter approved March 21st, 1874, P. L. of N. J., 1874, page 1176.

Recites that The Central Railroad Company of New Jersey is the lessee in perpetuity of the railroad, branches and works of the Lehigh Coal and Navigation Company in the State of Pennsylvania, and in order to secure a paying business it may be advisable and necessary that said railroad company should guarantee the payment of such bonds as may be issued from time to time by companies owning or working coal land adjacent to any of the said roads or works.

Section 1 authorized the Central Railroad Company of New Jersey to guarantee the payment of bonds of any coal company or companies owning or working coal lands along the line of or adjacent to any of the railroad's branches or works in the State of Pennsylvania so held by lease by the said company, and in which lands the said company may or may not have an interest.

MR. DEFOREST:—I offer in evidence a statement of the assets of the Central Railroad Company of New Jersey, as per balance sheet of April 1st, 1851, and also the liabilities as per the same balance sheet.

It is understood that the Government reserves a general objection as to relevancy and materiality, but not as to the manner of proof, of these exhibits.

The statement is as follows:—

ASSETS, PER BALANCE SHEET OF APRIL 1ST, 1851.

Railroad.		
Grading	$128,207.61	
Land damages	83,974.27	
Iron rails	152,249.80	
Masonry	44,000.00	
Engineering	12,559.21	
Law expenses	1,340.72	
Depots, shops, &c.	26,125.00	
Land at Elizabethport	18,089.88	
Elizabethtown & Somerville R. R. purchase	550,099.00	
Construction, Somerville to White House	246,236.83	
Construction, White House to Phillipsburg	30,000.00	
		$1,292,882.32
Equipment, Railroad.		
Engine Account	$30,000.00	
Car Account	30,000.00	
		60,000.00
ELIZABETHPORT & NEW YORK FERRY.		
Steamer "Red Jacket"	$40,000.00	
Capital Stock	110,188.00	
Improvements	373.67	
		150,561.67
Materials.		
Wood	$1,600.00	
Coal	340.00	
		1,940.00
Cash		1,643.09
		$1,507,027.08
Interest		17,014.59
		$1,524,041.67

LIABILITIES PER BALANCE SHEET OF APRIL 1ST, 1851.

Capital Stock		$892,250.00
Funded Debt.		
Somerville Mortgage Bonds	$42,000.00	
Somerville Bonds payable.,	109,000.00	
Central Mortgage Bonds..	463,000.00	
		614,000.00
Miscellaneous.		
Bills Payable	$4,000.00	
Elizabethport & New York Ferry Co.	11,203.96	
Jas. Laurie, C. E.	1,674.21	
Interest-Dividend No. 4...	913.50	
		17,791.67
		$1,524,041.67

MR. DEFOREST:—I offer in evidence a similar statement showing the assets of the same railroad company as per balance sheet of December 31st, 1870, and also its liabilities.

Government notes the same objection and reservation.

ASSETS PER BALANCE SHEET OF DECEMBER 31ST, 1870.

Railroad.

Railroad	$7,764,112.25	
Station houses	546,035.39	
Land in New York City...	168,121.62	
Docks in New York City ..	344,556.21	
Jersey City Station	964,448.10	
Pt. Johnston Coal Station.	695,076.01	
Elizabethport Station	300,146.10	
Somerville purchase.	30,231.25	
Phillipsburg purchase.	60,291.09	
Telegraph Line.	5,239.93	
		$10,887,257.95

Equipment, Railroad.

Engines.	$1,193,000.00	
Passenger Cars.	507,000.00	
Freight Cars.	316,000.00	
Coal Cars.	658,000.00	
Machinery, Tools, &c. . . .	168,848.23	
		$2,842,848.23

ELIZABETHPORT & NEW YORK FERRY.

Capital Stock.	$49,046.10	
Ferry Boats.	525,000.00	
Bergen Point Wharf.	10,508.61	
		584,554.71

Materials & Miscellaneous Property.

Wood.	$48,985.56	
Coal.	20,404.99	
Rails.	44,958.68	
Ties.	20,875.08	
Chairs & Spikes.	12,191.85	
Workshop Material.	108,681.70	
Miscellaneous.	40,000.00	
		296,097.86

Investments in Sundry Properties.

American Dock & Impt. Co. Stock.	$1,500,000.00	
Newark & New York R. R. Co. Stock.	750,000.00	
Newark & New York R. R. Co. Account.	705,217.17	
Union Central Coal & Iron R. R.	23,010.90	
Central New Jersey Land & Impt. Co.	2,022,389.77	
New Jersey Stock Yard & Market Co.	73,614.49	
South Branch R. R. Co. . . .	1,394.37	
		5,075,626.70

Cash & Miscellaneous Accounts.

Cash	$5,540.02	
General Passenger Agent	16,013.96	
General Freight Agent	85,669.93	
Commission Account	608.11	
Post Office Dept	3,943.10	
Hope Express Co	287.00	
Roselle Land & Impt. Co	127.63	
New Boston Coal Co	160.50	
Del., Lack. & Western R. R. Co	49.22	
Phila. & Erie R. R. Co	256.95	
Oil Creek & A. V. R. R	1.48	
		$112,657.60
		$19,799,043.35

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

LIABILITIES PER BALANCE SHEET OF DECEMBER 31ST, 1870.

Capital Stock		$15,000,000.00

Funded Debt.

1st Mortgage Bonds	$140,000.00	
2nd Mortgage Bonds	254,000.00	
Mortgage Bonds of 1890	2,837,000.00	
Bonds and Mortgages payable	30,500.00	
		3,261,500.00
Temporary Loans		916,334.29

Miscellaneous.

Interest Fund.	$90,500.00	
Interest, 1st Mortgage Bonds	4,296.25	
Interest 2nd Mortgage Bonds.	894.25	
Interest Mortgage Bonds of 1890.	448.00	
Dividends.	164,690.50	
Dividends—South Branch R. R. Co.	6,230.20	
Dividends—Ferry.	246.00	
Paymaster.	2,611.60	
American Dock & Improvement Co.	341,354.61	
		$611,271.41
		$19,789,105.70
Renewal Fund (Profit & Loss).		9,937.65
		$19,799,043.35

MR. DEFOREST:—I offer in evidence a summarized statement of the capital stock of the Central Railroad of New Jersey at various dates between 1851 and 1871.

Government notes the same objection and reservation.

CAPITAL STOCK—AT VARIOUS DATES, PER BALANCE SHEETS.

1851—April 1.	$892,250.00
1852—April 1.	954,000.00
1853—April 1.	1,034,700.00
1854—April 1.	1,679,935.00
1855—April 1.	2,000,000.00
1856—April 1.	2,000,000.00
1857—April 1.	2,000,000.00
1858—April 1.	2,000,000.00
1859—April 1.	2,200,000.00
1860—January 1.	2,412,000.00

1861—January 1.	$3,630,000.00
1862—January 1.	3,630,000.00
1863—January 1.	3,630,000.00
1864—January 1.	4,620,160.00
1865—January 1.	6,500,000.00
1866—January 1.	10,685,940.00
1867—January 1.	13,000,000.00
1868—January 1.	13,768,600.00
1869—January 1.	15,000,000.00
1870—January 1.	15,000,000.00
1871—January 1.	15,000,000.00

MR. DEFOREST:—I offer in evidence extracts from the reports of the Board of Directors of the Central Railroad Company of New Jersey showing development of its railroad and connections as follows:—

Government notes the same objection and reservation, and the additional objection that these are self-serving declarations.

REPORT APRIL 1, 1853.

On July 2, 1852, the road was formally opened from Elizabethport through to Phillipsburg opposite Easton. At Phillipsburg an octagonal stone engine house for sixteen locomotives, and large passenger, freight and car houses have been erected, and the main track is being extended down to the railroad branch now erecting over the Delaware River by the Lehigh Valley Railroad Co.

The Lehigh Valley road (late known as the Delaware, Lehigh, Schuylkill and Susquehanna Railroad) has been put under contract and considerable progress made in its construction. The whole of the money required having been secured it will certainly be completed by July, 1854, thus opening the rich Lehigh Valley and bringing the coal and iron of that district in direct connection with New York. The advantages of this road for the transportation of coal will be singularly great, the entire distance from the mines to South Easton having descending

or level grades in the direction of the traffic. The Catawissa Railroad is also under contract and constructing as rapidly as full force can work—the managers intending to have the whole completed to its junction with the Sunbury & Erie Road by the first of May next. The last named road is in such a position as to give a fair prospect that a direct line of 462 miles from New York to Erie, on Lake Erie will be completed at an early day. The necessary legislation has also been obtained for a connection with Pittsburgh and the Pennsylvania Central Railroad, over the road of the Dauphin Coal Company.

The line from your road at New Hampton, by the Delaware Water Gap, Scranton and Binghamton, through the Lackawanna coal region, to Oswego, on Lake Ontario, is also in a very forward state.

The part from New Hampton to Scranton will be completed in the Fall of 1854. The remainder of the route is either in operation or nearly ready; so that the filling in this link will at once open to this company not only the Lackawanna region, but also the trade of Northern New York, Lake Ontario and Canada. By authorized consolidations this line has been reduced to three companies, namely, your company, the Delaware, Lackawanna and Western and the Oswego, Syracuse and Binghamton Railroad Companies. An important feeder to this route will also be found in the line from Owego to Little Sodus Bay, on Lake Ontario, part of which, from Owego to Ithaca, has been several years in operation.

This position of things renders almost imperative the immediate construction of a second track from Elizabethport to Somerville.

REPORT APRIL 1, 1854.

The map prefixed to this report has been carefully prepared with reference to geographical accuracy to show not only this line and its connection, but also the principal lines in New Jersey, Pennsylvania and New York.

The progress of work on the Lehigh Valley Railroad

from Easton to Mauch Chunk and the Lehigh coal fields has not been as rapid as expected, and it is now certain that it will not be opened in July according to the terms of the contract. The managers of that work are confident that it will not be delayed beyond the Fall, and every exertion is using to hasten its completion. Had the bridge over the Delaware River at Easton and the rock cut at the same place been completed this Spring the cars would now have been running to and beyond Allentown, but as this is, unfortunately, the ruling point on the road the whole work will be kept back until its completion. The opening may be safely counted on before the Winter sets in. In view of the present scarcity of coal it is of immense importance to many interests besides those of the two companies that such should be the case.

A connection with Pittsburgh and Ohio, over the Pennsylvania Central Railroad, has been further advanced by the completion of the Dauphin Railroad from Harrisburg to Port Clinton, leaving to be supplied only the gap of 33 miles from Port Clinton to Allentown on the Lehigh Valley Railroad.

The Catawissa Road, west of the Lehigh Valley Road, will be shortly open, but the latter must be extended from Mahoning Creek to Tamaqua to meet it before any advantage can be derived from this travel.

The Warren Railroad, diverging to the northwest from Hampton Summit, to connect with the Delaware, Lackawanna and Western Railroad, is now under contract and a construction vigorously commenced. The construction of the southern division of the Delaware, Lackawanna and Western from the Delaware River, where it intersects the Warren road, to Scranton, where the northern and finished division of the road terminates, will be finished simultaneously with the Warren road. Long before these two roads are open, the Oswego, Syracuse and Binghamton road will be in operation from Oswego down to the Erie Railroad, and the business from Lake Ontario be brought over that new avenue ready on the completion of the Lackawanna and Warren roads, and the lay-

ing of the third rail on the Central Road, to become a new and important element of traffic to the latter. A contract between the Lackawanna, Warren and Central roads has been made, ensuring harmony of action and a fair division of receipts. (Agreement of January 27th, 1854, hereinafter referred to.)

The distances on these various routes were given in the report made in 1852; but as all the stockholders may not have this to refer to, and as some of the distances have since been more accurately ascertained, we repeat them.

1. New York to Lehigh Coal Mines.

New-York to Easton, via. Central R. R. of N. J.	75 miles
Easton to Mauch Chunk, via. Lehigh Valley R. R.	46 miles
Mauch Chunk to mines, via. Beaver Meadow R. R.	17 miles
Total.	138 miles

2.—New York to Erie.

New York to Easton, via. Central R. R. of N. J.	75 miles
Easton to Mahoning Cr., via Lehigh Valley R. R.	42 miles
Mahoning Cr. to Tamaqua via. Lehigh Valley R. R.	18 miles
Tamaqua to Milton, via. Catawissa R. R.	72 miles
Milton to Erie, via. Sunbury and Erie R. R.	257 miles
Total.	464 miles
Erie to Cleveland	95 miles

3.—New-York to Cleveland.

New York to Milton, via. Central, &c., as above.	207 miles
Milton to Ridgway, via. Sunbury and Erie R. R.	149 miles
Ridgway to State Line, via. Venango R. R.	120 miles
State Line to Cleveland, via. Mahoning R. R.	70 miles
Total.	546 miles

4. New York to Pittsburgh.

New York to Easton, via. Central R. R. of N. J.	75 miles
Easton to Allentown, via. Lehigh Valley R. R...	16 miles
Allentown to Port Clinton, via. Allentown R. R..	33 miles
Port Clinton to Penn. Central, 9 miles above Harrisburg, via. Dauphin R. R.....	57 miles
Junction to Pittsburgh, via. Pennsylvania Central R. R.	238 miles
Total.....	419 miles

5.—New York to Lackawanna Coal Mines.

New York to Hampton, via. Central R. R. of N. J.	60 miles
Hampton to Delaware River, via. Warren R. R..	18 miles
Delaware River to Scranton, via. Delaware, Lackawanna and Western R. R.....	61 miles
Total.....	139 miles

6.—New York to Oswego and Lake Ontario.

New-York to Scranton, via. Cen'l, &c., as above.	139 miles
Scranton to Great Bend, via. D. L. and W. R. R.	48 miles
Great Bend to Binghamton, via N. Y. & E. R. R.	14 miles
Binghamton to Syracuse, via. Syracuse and B. R. R.....	80 miles
Syracuse to Oswego, via. Oswego and S. R. R..	35 miles
Total.....	316 miles

At the recent session of the legislature a further supplement of the charter was granted, empowering this Company to hold whatever wharves, piers, lands or lots, steamboats, sailing vessels and other facilities in the City of New York or elsewhere, which may be necessary for the management of their business and giving it the right to extend piers to deep water at Elizabethport, and to increase the capital from time to time to five million dol-

lars. This Company can now, from time to time, obtain the requisite means for the enlargement and extension of their enterprise by an issue of stocks instead of bonds.

Without a single connection open the business is steadily increasing in all its departments, and from every point at a rate which would soon give a liberal return on all the capital invested. In the Fall the Lehigh Valley road, without proportionately increasing the expenses, will bring its large business to this road. In the following year the Lackawanna route will open. Within a few years at furthest, the two avenues to the west, via the Pennsylvania Central and the Sunbury and Erie roads, will also be in operation.

The Company have a route resting on New York and running directly west with a variation of only a few miles from an air line; existing not in the shape of a promising enterprise, but of a road already built, equipped and running and free from financial difficulties. Add to this, that all grades coming east are reduced to 21 feet to the mile: and that, as the gauge conforms to the ordinary 4 feet 8½ inch gauge of Pennsylvania and New York, the convenience of companies will be the only limit to the transportation of passengers and freight without change of cars. All these circumstances combined give an exceedingly favorable aspect to the prospects of the company, and it would seem that the developments of the future can scarcely fail to meet the wishes of the stockholders.

REPORT APRIL 1, 1855.

Preparations for laying a third rail on the present track, to furnish the six foot gauge required for the Lackawanna connections at New Hampton, have been commenced, and the cross ties needed for this work and for the second track, are either on hand or already laid. Arrangements have also been made at the western end of the road for the Lehigh Valley Railroad connection.

The connecting lines are still unopened—the pressure of the times having retarded, though it could not stop, their progress.

The Lehigh Valley Railroad is now so far advanced that the portion from Easton to Allentown will be opened next month. The bridge over the Delaware River is almost completed and about half the track already laid, and the engineers rely on having the whole road open to Mauch Chunk during the month of July. Extensive preparations for business are making in that region, in anticipation of this new outlet.

It is of great importance to the Central Road, as well as to the Lehigh Valley road that immediate steps be taken to extend the latter to a junction with the Catawissa and Sunbury and Erie roads at Tamaqua. The distance is only 18 miles and the work of an easy character.

No definite action has yet been taken by the managers of the Allentown Railroad to supply the link via Dauphin and Pennsylvania Central Roads to Pittsburgh, but the route has been re-surveyed and friends of the enterprise are preparing to commence the road this season.

REPORT APRIL 1, 1856.

During the past year a large amount of work has been done on the road. The third rail for the broad gauge connection with the Lackawanna road has been placed on the present track as far as Hampton, and on the second track as far as laid, and the substitution of long ties on that part of the road principally completed.

The present year will, without accident, see a complete double track in operation between Elizabethport and Hampton, 48 miles.

At Elizabethport the construction of track, wharves and buildings has been continued and a large amount of grading and filling done at moderate cost. An additional and very valuable tract of land, including the water front, and lying east of the company's land, has been secured; and immediately contiguous to this the Delaware, Lackawanna and Western Railroad Company have purchased a large tract, and established there their coal depot. All coal, lumber, &c., from the Lackawanna region are

brought to Hampton in their cars, hauled over our road by our engines and delivered on their grounds. All wharves, tracks, &c., required are furnished by them. Those arrangements, by relieving this Company from a large outlay for cars and a terminus, enable us to do a very large business from the Lackawanna region, with a trifling additional investment after the second track and the third rail on the two tracks are provided.

It also facilitates very much the necessary separation of the broad gauge business from that of the Central Road and the Lehigh Valley Railroad and its connections, which is done on the narrow gauge.

The Lehigh Valley Railroad was opened through from Easton to Mauch Chunk, 46 miles, in September last, thus giving a continuous line from the Lehigh coal fields to Elizabethport. Distance from Mauch Chunk to Elizabethport, 109 miles; to New York, 121 miles. The mines are about 17 miles above Mauch Chunk. As yet this road has done little business, having a very insufficient equipment, and laboring under some other disadvantages; but when these difficulties are removed, it cannot avoid doing a large and profitable business, as it has all the advantages derived by the Reading Road from a level or descending grade throughout its entire length, is likely to be without a rival in its location, and will have the benefit of many outlets for its coal and many feeders for its business. When its main line is extended from Parryville, 6 miles below Mauch Chunk, to Tamaqua, where it intersects the Catawissa Road, a distance of 16 miles only, a large through business from the Sunbury and Erie Road will be brought over it to the Central Railroad of New Jersey. This work is entirely within the ability of the company to complete, as soon as their business is developed.

The link of road from Allentown westward, to connect with the Pennsylvania Central Railroad and thus form an air line of unbroken gauge from New York to Pittsburgh, still remains to be supplied. Important as this enterprise is to the country through which it will pass, a country rich in soil, in cultivation, in minerals, in everything but ave-

nues to a market; to the city of New York and the Western States, brought by this channel into more intimate connection; and to the Central Railroad of New Jersey, which it will supply with an entirely new source of traffic; it cannot be much longer delayed.

The Delaware, Lackawanna and Western Railroad and the Warren Railroad, together forming the line from Hampton Summit to Scranton, in the Lackawanna coal basin, the youngest in charter and latest in commencement among the coal roads, was opened throughout its entire length on the 27th May just past, and is now in successful operation. Already the passenger, freight and coal business of this road begin to develop, and it is believed by its friends that its success will be immediate. Every effort has been made and is making, by the Central, to give them every facility consistent with proper economy, and it is hoped that the relations of the companies will be as friendly as their business connections will be intimate.

The company have now a line complete from New York, through the Lackawanna coal field, to Oswego on Lake Ontario.

They have a line complete from New York to Mauch Chunk and the Lehigh coal fields.

Forty miles built will make an air line of unbroken gauge to Pittsburgh, and also bring in the Schuylkill coal.

Eighteen miles built will make a connection of unbroken gauge with the Sunbury and Erie Road.

Schuylkill, Lehigh and Lackawanna coal will be the same distance (say 125 miles) from Elizabethport.

REPORT APRIL 1, 1857.

At Elizabethport a branch road of over two miles was constructed through Port Avenue to give access to the Lackawanna coal wharves; at New Hampton a turntable and an engine house capable of holding six engines were constructed. At the junction with the Warren road in the deep cut at the summit elevation, the grade of the north track and of the siding has been lowered about seven feet.

to conform to the grade of that road. The company will make grading down the south track to correspond. At Phillipsburg additional side tracks were put down. The company are now constructing some three quarters of a mile of second track from the end of the bridge over the Delaware River to give more room for the coal and iron trains at the end of our road and junction of the Lehigh Valley Railroad. A siding for freight trains has been graded and a station house for passengers and freight erected by our company on the Lehigh Valley Railroad at the bridge over the Lehigh at Easton.

The present amount of side tracks at the junction of the Warren Road is insufficient and at least as much more will be required to give proper accommodations to both companies.

When the second track, side tracks and other improvements proposed are completed, the engines ordered upon the road, and a large freight boat upon the ferry, the company will be prepared, in every way, to accommodate all the business that may be offered to them the coming year.

The Lehigh Valley Railroad has been steadily increasing its facilities for doing business, and is now fairly established, though neither passengers nor merchandise are yet coming from this quarter in such amounts as may be expected hereafter. The transportation of pig iron has been 18,756 tons; and of Lehigh coal 46,975 tons.

The opening of the Delaware, Lackawanna and Western Road was announced in the last report. Not much was done before July, but since that time a large business has been brought on your road from this connection. The transportation of merchandise has been 17,705 tons; and of Lackawanna coal 150,115 tons.

Nothing has been done towards extending the main line of the Lehigh Valley Road to Tamaqua, but another company has been formed to accomplish the same results—a connection with the Sunbury and Erie Railroad by a different route, intersecting the Beaver Meadow Road and bringing the business over the entire length of the Lehigh Valley Road.

Active preparations are making to put the Allentown Road under contract. The original plan of a connection by the Dauphin Road with the Pennsylvania Central is now extended to include also a branch to Reading, and thus a connection with the Lebanon Valley Railroad.

For several years past the company have been spending large sums on the road and its appurtenances, and preparing in advance, for the business which it was known must be brought upon the route as soon as the connecting lines were opened. The delay in the completion of these roads made a corresponding delay in realizing a return on these outlays, but that time is now past. The facilities for doing a large business exist and are paid for, and the business is now coming. For the last nine months the increase has been large, and this increase may be expected to continue regularly. With every year the condition of the company will improve.

REPORT APRIL 1, 1858.

During the past year the construction of the second track from Elizabethport to Hampton, the junction with the Warren road, has been entirely completed.

With the exception of a very small amount of ballasting, the work of construction is at length brought practically to a close, and the company have 48 miles of double track with three rails in each track and 15 miles of single track in perfect order thoroughly ballasted and fit to stand comparison with any road in the country.

Another coal wharf has been erected at the Port for the shipment of Lehigh coal and the wharf erected last year has been enlarged and improved. There are now three wharves for the shipment of Lehigh coal and five for Lackawanna.

A large freight boat, the "Kill Van Kull," has been built and placed on the ferry at an expense of $75,000.

The Lehigh Valley Railroad continues to increase its coal traffic and is rapidly establishing itself among the great coal avenues. The passenger and freight traffics are comparatively neglected, nor are they likely to increase materi-

ally until avenues for the business from the West are opened. The Delaware, Lackawanna and Western Railroad, notwithstanding the low price of coal, are transporting large quantities; all of which passes over this road to tide water at Elizabethport, except such as is required for local use on the Morris Canal.

The road from Reading to Allentown, now known as the East Pennsylvania Railroad, has gone on steadily and the company are sanguine of opening a direct communication between New York and Pittsburgh late in the Fall.

REPORT OF APRIL 1, 1859.

Three new wharves for shipment of Lehigh coal at Elizabethport have been put under contract to be completed in the Summer, and will double the facilities for that branch of our business. The Lehigh Valley Railroad and the Delaware, Lackawanna and Western Railroad both continue in successful operation, more particularly as coal roads. On both, the transportation of coal is assuming a magnitude that shows that the advantages that would be possessed by eastern outlets from the great Pennsylvania coal fields have not been over-estimated. On both the development of passenger and freight traffic has been in a measure neglected and to these causes, partly, the rapidity with which the former business outstrips the two latter, on our own road, is to be ascribed.

The East Pennsylvania Railroad, extending from Allentown to Reading, is just completed, and will commence business early in May. The long-talked-of direct line to Harrisburg, Pittsburgh and the West, without break of gauge, is thus become a reality; but it is not intended to put on any but local trains for some months, to give time for the road to be thoroughly adjusted, and everything in good condition for running express trains. The local business on this road and from the Lebanon Valley will be very large, and will give the company a remunerative business, independent of through business, while the great interest shown in the line by the Western States is a guarantee that, when put in

operation as one of the routes to the West, it will command its full share of business.

The year just closed has been, to the Company, one of continued prosperity and success. The remarkable geographical position of the road has secured a remunerative business, which gives every promise of continuing steadily to develop. The favorable returns of the present year are made in a season of dullness and depression in every branch of business, and of stagnation in the coal trade.

REPORT OF JANUARY 1, 1860.

Three new coal wharves have been built at Elizabethport, purchases of land made, ground filled and docks prepared for the more extensive shipping of iron.

Both the Lehigh Valley Railroad and the Delaware, Lackawanna and Western Railroad Companies continue eminently prosperous and the increase of coal business from each has been shown. Their contributions to our passenger and freight business have very much improved.

The East Pennsylvania Railroad is now in successful operation as a local road. Negotiations are pending with this and the other connecting lines to Harrisburg to establish a great middle route to the West.

REPORT OF JANUARY 1, 1861.

Additional dock facilities have been provided at Elizabethport.

At the last session of the Legislature the supplement so often applied for was at last granted and authority was thereby given to this Company to extend their road from Elizabeth to the Hudson River. In many respects the charter is very favorable and gives every proper facility for selecting the best route and obtaining suitable terminal facilities.

Trains to and from Harrisburg, including a morning express line to that place, have been run with success, and the cattle trains have been taken through as an experiment.

REPORT OF JANUARY 1, 1862.

It has become highly desirable to extend the second track from Hampton Junction, where it now terminates, to Easton. The distance is 15 miles, of which about 12 miles remain to be graded. Part of this work will be very heavy and will take some time, but the first 7 miles require but little time or expense, except the ballast or superstructure. The track will be laid as rapidly as sections are completed, very much to the relief of trains on the western end of the road.

Unexpectedly to this Company they were called on by the Government early in the Summer to transport large bodies of troops to Baltimore and Washington by the way of Harrisburg; between 26,000 and 27,000 in all have been thus taken, and large amounts of freight have also been taken for the Government.

The business from the Delaware, Lackawanna and Western R. R. has been very good considering the times; that from the Lehigh Valley Railroad, aided by its connections, has been still better maintained. An express passenger line east and west has been run in close connection with the Pennsylvania Central Railroad and well sustained.

REPORT OF JANUARY 1, 1863.

During the past year active preparations have been making for extending the road from the curve in the track east of Elizabeth where it turns down towards Elizabethport across Newark Bay to Bergen Point and from thence northeast to Jersey City. The location across the Bay has been filed and the bridge put under contract, the construction commenced and good progress made. The right of way has been principally secured and extensive preparations of lands and water rights made that will give the Company facilities for a most unbounded business of any and all descriptions.

To build the extension to Jersey City, provide extensive docks and ferries for business, complete the double track and add largely to the equipment of engines and

cars, including the company's proportion of cars for the Lehigh Coal trade, will require a large outlay. To meet this it is proposed to apply to the stockholders soon for authority to increase the capital to $5,000,000.

From the Lehigh Valley road, at Lizard Creek, an important road is building rapidly, intended to bring Schuylkill coal across from Schuylkill Haven to the Lehigh Valley, and so down to Elizabethport, the operators in that coal field feeling sensibly the want of a direct outlet to New York Bay.

The Penn Haven and White Haven Railroad is also constructing as an extension of the Lehigh Valley Railroad along the Upper Lehigh, completing the line of roads into the Wyoming Valley at Wilkes-Barre. A large addition of coal tonnage is looked for by them from this enterprise.

To give an idea of the rapid growth of business from the Lehigh Valley and its connections, the following comparative table is added.

	Passengers.	Merchandise.	Coal.	Total.
Lehigh Connection..	$72,404.30	$228,589.81	$366,108.50	$667,102.61
D. L. & W. R. R. Connection.....	18,370.96	94,616.40	295,172.35	408,159.71
			Other Sources.	
Local business.....	139,530.15	158,770.90	24,023.25	322,324.30

The business derived from the Lehigh Valley connection is thus shown to be forty-six per cent. of the whole business; from the D. L. & W. connection, twenty-eight per cent., and the local business twenty-six per cent.

REPORT OF JANUARY 1, 1864.

The extension from Elizabeth to Jersey City has been pushed as vigorously as possible. The bridge across Newark Bay is far advanced toward completion.

Considerable progress has been made with the bulkhead and filling for the company's station grounds on the mud flats below Jersey City.

It is difficult as yet to fix the time when the trains can run through to Jersey City. It will not, however, be long before the passenger trains can be passed over. To move the freight business from Elizabethport is a more serious undertaking, will take longer and be gradual in the transition. Much as the company need this outlet to meet the pressure of old business enlarging and new business offering, yet the amount of preparation still to be made is considerable before they can do their whole business there in a satisfactory manner. With the lands and the water front that have been secured, it is believed that no company can offer such terminal facilities for business as this will be able to do when their works are further developed.

REPORT OF JANUARY 1, 1865.

The extension of the road from Elizabeth to Jersey City was formally opened on the 2d of August (1864) and the passenger trains have since run regularly over the road.

Since the opening of the extension the through passenger business in connection with the Pennsylvania Railroad has been perfected by doubling the trains, and they are now running regularly with sleeping cars and every convenience. A large increase in travel has been the result and the route has rapidly gained in favor.

REPORT OF JANUARY 1, 1866.

During the year the work on this important part of the road has been steadily prosecuted, while the passenger trains have run regularly over it. A portion of the freight business has also been transferred to Jersey City, but the amount that could be so shifted prior to the close of the fiscal year was unimportant. The bulkheads and filling at the Jersey City terminus have been carried on as rapidly as possible, and now (March) a large area is reclaimed and covered with buildings and passenger and freight tracks, and the merchandise and miscellaneous freight coming in narrow gauge cars will soon be all trans-

ferred to this place. The economy and expedition with which freight can here be handled will soon justify the large expenditures for land and work made to secure such an outlet, the intention being to save one handling and a great part of the risk of damage and loss, by direct transit between the cars and the owner's warehouse. The broad gauge freight must continue at Elizabethport for the present till a third rail has been laid to Jersey City, or other arrangements made.

The work on this wharf (Port Johnston) is being pushed on as fast as possible. The storage part of the wharf is 1150 feet long, making the length of the whole wharf 2650 feet, with a storage capacity of 100,000 tons.

It is now expected to commence shipping over this wharf in May, when the most beneficial effects in the company's Lehigh coal trade may be expected.

The capacity of the wharf for business is estimated at more than all the Lehigh coal wharves at Elizabethport combined; and in addition there will now be ample room for depositing coal that can not be immediately shipped.

The land agents of the company are purchasing additional land wherever the right of way is less than 100 feet in width.

About 200 feet of water front having been secured in New York city opposite Liberty and Cedar Streets, and immediately south of Cortlandt Street Ferry to Jersey City, the company have erected thereon large and commodious structures suited to the expeditious transit of passengers and vehicles.

REPORT OF JANUARY 1, 1867.

Though the second track is now in use over the entire road, yet it has been found necessary to commence work at certain points for the third track.

One of the large piers at Jersey City has been covered with a building to facilitate the transfer of freight coming or going by water. Additional buildings and several miles of track have been added at the same place, and many acres of land prepared for business.

During the past season an extensive establishment for the purchase and sale of cattle, and for slaughtering on the most improved modern plans, has been built and put in active operations on forty acres of meadowland, just south of Communipaw, by a company chartered for that purpose.

REPORT OF JANUARY 1, 1868.

At Spruce Run additional track room is providing for the Lackawanna coal trade.

The new facilities for coal at Port Johnston have continued to be developed and improved. More than half the Lehigh coal brought over the road during the past year was shipped at this point, and the additional room and economical handling at this place have been a great advantage to the trade. To facilitate the consolidation of Lehigh coal at Port Johnston a second large wharf has been put under contract. Improvements in the storage wharf tracks have also been made.

The Delaware, Lackawanna and Western Railroad Company have under consideration a plan for the removal of a portion at least of their coal business to Jersey City.

The well-constructed road of the Lehigh Coal and Navigation Company on the north side of the Lehigh is now nearly ready to open for business. No new region is opened by this road, but more perfect facilities will be given to the country through which it passes, and a large amount of business will undoubtedly be developed as well as a certain amount of that already in existence diverted from the canal to this railroad.

REPORT OF JANUARY 1, 1869.

The track connections with the Lehigh and Susquehanna Railroad at Phillipsburg were completed during the year.

REPORT OF JANUARY 1, 1870.

During the year 2700 feet of third track has been laid for the accommodation of Scranton coal trains between Spruce Run and Glen Gardner; the graduation and ma-

sonry for 2700 feet of side track has been laid at junction. 4100 feet of fourth track has been laid between Clinton and Highbridge and 9000 feet of third track has been laid between Bay Bridge and Spring Street in Elizabeth, and new coal wharf, including the canals, tracks, etc., has been constructed at Port Johnston.

REPORT OF JANUARY 1, 1871.

The coal tonnage over the road since the transportation of coal was commenced, has been as follows:—

	Lehigh. Tons.	Lackawanna. Tons.	Total. Tons.	Inc. or Dec.
1856	33,325	98,670	131,995	131,995 Inc.
1857	84,841	209,950	294,791	162,796 "
1858	122,923	417,726	540,649	245,858 "
1859	183,277	455,681	638,958	98,309 "
1860	263,906	590,863	854,769	215,811 "
1861	254,345	568,869	823,214	31,555 Dec.
1862	314,195	502,375	816,570	6,644 "
1863	435,927	613,954	1,049,881	233,311 Inc.
1864	474,221	675,743	1,149,964	100,083 "
1865	509,819	494,687	1,004,506	145,458 Dec.
1866	511,076	778,173	1,289,249	284,743 Inc.
1867	513,425	855,620	1,369,045	79,796 "
1868	765,657	853,188	1,618,845	249,800 "
1869	733,485	822,567	1,556,052	62,793 Dec.
1870	997,504	1,054,680	2,052,184	496,132 Inc.
	6,197,926	8,992,746	15,190,672	

The following table shows the receipts, expenses and net earnings, from the beginning of the annual reports to the Legislature, to the present time:—

	Receipts.	Expenses.	Net Earnings.
1853	$349,018	$197,629 or 57 p. c.	$151,389 or 43 p. c.
1854	378,145	197,349 or 52 "	180,796 or 48 "
1855	393,729	208,856 or 53 "	184,873 or 47 "
1856	553,479	258,308 or 47 "	295,171 or 53 "
1857	682,314	340,502 or 49 "	341,812 or 51 "
1858	[illegible]	345,614 or 42 "	491,320 or 58 "
1859	971,702	385,716 or 39 "	585,986 or 61 "
1860	1,185,818	475,457 or 40 "	710,391 or 60 "
1861	1,201,895	522,452 or 43 "	679,443 or 57 "
1862	1,397,586	623,245 or 44 "	774,341 or 56 "
1863	1,941,976	814,732 or 42 "	1,127,244 or 58 "
1864	2,537,185	1,231,554 or 49 "	1,305,631 or 51 "
1865	3,036,390	1,748,434 or 57 "	1,287,956 or 43 "
1866	3,581,244	1,963,976 or 55 "	1,617,268 or 45 "
1867	3,350,398	1,878,022 or 56 "	1,472,376 or 44 "
1868	3,729,412	2,379,192 or 64 "	1,350,220 or 36 "
1869	4,010,121	2,642,163 or 66 "	1,367,958 or 34 "
1870	4,393,514	2,512,217 or 57 "	1,881,297 or 43 "
	$34,530,890	$18,725,418 or 54 "	$15,805,472 or 46 "

The cost of the railroad, double-tracked, with its coal wharves, station houses, shops, and other appendages, stand at $10,630,122.60, and that of the equipment at $2,674,000.

A very large addition to the coal traffic is the principal feature of the year's business, being an increase of nearly one-third. Part of this increase has been owing to the long continued strike in the Schuylkill region, which left the entire demand for hard coal to be supplied from the Lehigh and Lackawanna regions; but the whole business is rapidly growing, and the increase promises to hold good. Large additions to the shipping facilities will be required at Port Johnston, and coal wharves and coal yards will also have to be provided at Jersey City.

Lehigh and Susquehanna Railroad.

Since the close of the year 1870, a most important negotiation has been commenced and perfected for the lease of the Lehigh and Susquehanna Railroad and branches. This road extends from the terminus of the Central at Phillipsburg, up the Lehigh Valley, and across the mountain range into the Wyoming Valley; the main road being 105 miles in length, while the branches, sidings and double track, bring the length of track up to 252½ miles. The contract is perpetual, and practically carries the terminus of the road into the heart of the finest Lehigh and Lackawanna coal regions, with a certain command of a steady supply of coal from the extensive coal lands owned or controlled by the Lehigh Company. Printed copies of the lease will be sent to the stockholders. Attention is drawn to the fact that as the Lehigh Coal and Navigation Company receive as rent one-third of the gross receipts, this Company incur no liability except for business actually done. The risk of freshets also is taken by the lessors, and not by this company. The entire equipment of the road, consisting of 72 engines, 15 passenger cars, 10 baggage cars, 554 freight cars, 10,442 coal cars and 263 other cars is also purchased at valuations amounting to $3,632,750. All this equipment is new or nearly so, uniform in style and make, and cor-

responds with the Central cars and engines, so that much expense in maintaining will be avoided. Payment for this equipment is made by the assumption of $2,310,000 of the Lehigh Six Per Cent. Loan, due in 1897, and of the outstanding balances of the two Lehigh Car Trusts; so that the purchase requires no immediate payment of heavy sums, but can be made to suit the convenience of the treasury.

The road is in excellent order, especially the part from Phillipsburg to Mauch Chunk, which is laid entirely with steel rails, while the masonry and other work are of the first character. Most of the curves on the upper road are also laid with steel rails. The planes at Wilkes-Barre for raising the coal from the Wyoming Valley to the top of the mountains are entirely new, a complete success, and greatly reduce the cost of transporting coal from that region. In fact, no expense has been spared by the Lehigh Coal and Navigation Company to make their road as perfect as possible. It is believed to be a contract fair and advantageous to both parties, and likely to work well. It goes into operation on the 1st of April, and this report has been somewhat delayed so as to announce the fact of the lease to the stockholders.

It is proper to add that every care has been taken to avoid injury to the interests of the Lehigh Valley Railroad Company, from this acquisition. It is proposed that each road should take the business legitimately belonging to it; that equitable divisions should be made of business common to both, and that injurious competition (sure to end in combination) should be avoided. In this way it is hoped that the business of the region will be done more regularly and profitably to all concerned, the public included, than has been the case in the few past years.

REPORT OF JANUARY 1, 1872.

This road has been worked, for nine months of the fiscal year, as a division of the Central Road, to the great advantage and profit of both parties. Possession was taken without difficulty or jar of any kind, and the business opera-

tions of the road have been eminently satisfactory and harmonious. The construction of the second track between Easton and Allentown, and also at the most important points on the upper part of the road, has been steadily and economically pushed, and many miles will be added during the present season. The new portions of track, like the older, will be laid with steel rails, now under contract; station-houses will be built, sidings and freight-houses provided, moderate rates of toll maintained, and everything possible done to develop and expand the business. The Central policy will as far as possible be extended into Pennsylvania, and already the good effects are visible.

REPORT OF JANUARY 1, 1875.

Connecting Roads.

By agreement with the Delaware, Lackawanna and Western Railroad Co., their business will be entirely withdrawn on the 1st of April, when the third rail will be removed from the tracks. As will be noticed, their coal tonnage over the road has been reduced to a few hundred thousand tons.

The Lehigh Valley Railroad also expect to open their new road to Perth Amboy within the year, when what remains of their coal tonnage—also much reduced—will be withdrawn.

In parting with our ancient allies, it is pleasant to add, that friendly relations prevail and will be preserved, and that the business of each separately has grown to a volume more than equal to what that of the three companies united formerly amounted to."

Mr. DeForest:—In connection with the Report of 1854, I offer in evidence, and ask to have marked, as an exhibit, the map attached to, and forming a part of that report.

(Map marked "C. R. R. of N. J., Ex. No. 1, Apr. 7, 1914, C. H. G.")

Mr. DeForest:—I offer in evidence and ask to have marked as an exhibit, Agreement of July 21st, 1866, be-

tween Central Railroal Company of New Jersey, the Philadelphia and Reading Railroad Company, the East Pennsylvania Railroad Company and the Lehigh Valley Railroad Company.

(Agreement marked "C. R. R. of N. J., Ex. No. 2, Apr. 7, 1914, C. H. G.")

The following is a summary statement of said agreement. It is understood that either party may refer to all or any portion of the agreement, as it sees fit:—

AGREEMENT made July 21, 1866, between the *Central Railroad Company of New Jersey*, the *Philadelphia & Reading Railroad Co.*, the *East Pennsylvania Railroad Company* and the *Lehigh Valley Railroad Company*, together forming the Allentown line between Harrisburg, Pa. and the City of New York, of the first part, and *Joseph H. Moon*, acting for and on behalf of the parties to be associated under the name and title of the *Allentown Transportation Company*, of the second part, recites that it is desirable to establish a fast through freight line on the Allentown Line to Harrisburg and thence over the Pennsylvania Railroad to and from the western country, provides:

For the transportation of cars of the parties of the second part by the parties of the first part between Harrisburg and Jersey City on an 18 hr. schedule to secure the quickest dispatch for through trade between the East and West.

Parties of the second part agree to maintain agencies in the chief cities and towns of the West, and in the City of New York and other points east thereof, for securing business in both directions between the West and the East and to place suitable cars on the route in sufficient number to carry the trade procured by said agencies and arrangements.

The Central Railroad Company of New Jersey is to provide accommodations on and between its piers in the City of New York for the parties of the second part, who agree to pay a rental of $7,500 per year and to provide floats for carrying cars between Jersey City and New York.

Rates and basis of settlement are provided for.

Agreement effective September 1, 1865, continuing five years with further termination clause upon six months' notice."

MR. DEFOREST:—I offer in evidence Agreement made November 25th, 1867, between the Central Railroad of New Jersey, the Lehigh Valley Railroad Company and A. Pardee & Company, and ask to have the same marked as an exhibit.

(Marked "C. R. R. of N. J., Ex. No. 3, Apr. 7, 1914, C. H. G.")

The following is a summary statement of said agreement. It is understood that either party may refer to all or any portion of the agreement, as it sees fit.

AGREEMENT made November 25, 1867, between the *Central Railroad Company of New Jersey*, the *Lehigh Valley Railroad Company* and *A. Pardee & Company*, representing the *Hazleton Railroad Company*, recites that in consideration of the benefits of a coal trade from the mines on the railroad connections of the party of the third part, and over the railroads to the parties to this agreement to Port Johnston, the parties mutually agree to build 568 four wheel six ton coal cars, the Central Company to pay for 272 cars, the Lehigh Company to pay for 216 cars and A. Pardee & Co., representing the Hazleton Company, to pay for 80 cars, and place them on the route indicated as soon as built, and maintain them there and keep them constantly employed, each party keeping their own proportion of cars in repair.

Then follows plan of operating cars and payment of demurrage for detention, &c.

MR. DEFOREST:—I offer in evidence the following extracts from the reports and minutes of the Lehigh Coal and Navigation Company:—

(Government notes the same objection and reservation.)

REPORT OF MAY 4, 1869.

The connection with the Morris and Essex Railroad was not made until March 14th, and with the Central Railroad

of New Jersey not until 1st May; while with the Belvidere Delaware Railroad and Morris Canal we had no connection until after July 1st, when the strike interrupted business until after 1st August. It was impossible, during a period of severe competition, when other coal carrying companies were deriving little or no advantage from the transportation of a large tonnage, to make more than the running expenses of the road, whilst still unfinished, with connections imperfect, and trade undeveloped.

REPORT OF MAY 3, 1870.

Railroad.

The reports of income for the year indicate the increasing importance of the railroad and that the Company must in the future regard this as its most certain source of revenue. The canal is more liable to injury from freshets and, while a valuable auxiliary, its entire destruction would still leave the Company the means of transporting to market all of its own coal and a large amount for other parties, with ability to increase only limited by its financial resources for extending track and increasing equipment and its necessary adjuncts.

Extracts from the minutes of a special meeting of the Stockholders of the L. C. & N. Co. held March 28, 1871.

The communication from the Board of Managers submitted and read at this meeting was read in evidence on behalf of the Government on February 13th, 1914, and may be found on pages 279 to 287 inclusive of the stenographer's minutes.

REPORT OF MAY 2, 1871.

The most important event that has transpired in the affairs of the company since the opening of the present year is the lease of our railroads to the Central Railroad Company of New Jersey, which was confirmed at a meeting of the stockholders held March 28th. This Company is to receive as rent one-third of the gross receipts derived from

all the business of the leased roads; the equipment and machinery employed to be furnished and maintained by the lessees at their own cost. In comparing this percentage with that realized during the past two years—namely, 39½ per cent. of the gross receipts in 1869, and 33 67/100 per cent. in 1870—there must be deducted from the latter the interest and depreciation on the equipment, which cost us more than 15 per cent. of the gross receipts during the two years, and is likely to cost the lessees at least 12½ per cent. By working the two roads as one line, and using the power of each to develop the trade of the other, they can reduce the expenses of both roads, and can well afford to pay as rent all we could make out of our roads under favorable conditions.

In addition to the reasons stated at the special meeting, as among those which induced the managers to enter into the negotiations for the lease, may be added the difficulty of carrying our large and increasing floating debt. The railroads were making demands on our resources for additional sidings, tracks, buildings and equipment; and by leasing them we are not only relieved from all demands for equipment, and any present demands for money for additions to the road, but have also secured financial aid which will enable us to pay off a portion of the floating debt and fund the remainder. The sale to the Central Company of materials, machinery and securities, including a million of bonds of our proposed general mortgage, will give us $1,500,000, and this amount, with our net receipts during the first four months after resumption of work at the mines, will reduce our floating debt to less than one million dollars. This sum we expect to provide for hereafter by the sale of bonds.

MR. DEFOREST:—I offer in evidence the following statements and extracts from the reports of the Lehigh Valley Railrad Company.

(Government notes the same objection and reservation, and the further objection that these are declarations by a corporation not a party to this litigation.)

The Lehigh Valley Railroad Company was organized under the name of the Delaware, Lehigh, Schuylkill & Sus-

quehanna Railroad Company under an Act of Assembly of Pennsylvania passed April 21st, 1846, for the construction of a railroad from Easton to a connection with the Beaver Meadow Railroad at Parryville and the coal fields of Pennsylvania.

By an Act of Legislature of Pennsylvania passed in 1849 and an Act of the Legislature of New Jersey passed in 1850, it was authorized to erect a railroad bridge across the Delaware River at or near Easton to connect with the railroad of The Central Railroad Company of New ersey.

By an Act passed January 7th, 1853, the name of the company was changed to that of the Lehigh Valley Railroad Company.

John Taylor Johnston, president of the Central Railroad Company of New Jersey from 1852 to 1877, was elected a director of the Lehigh Valley Railroad Company on January 10th, 1853, and re-elected from year to year and served until after the lease of March 31st, 1871, by the Lehigh Coal and Navigation Company to The Central Railroad Company of the Lehigh and Susquehanna Railroad.

Asa Packer, who, during the greater portion of this time was president of the Lehigh Valley Railroad Company, was elected a director of The Central Railroad Company of New Jersey on January 1st, 1863, and served from year to year until after the time of the said lease.

Extracts from minutes and annual reports of the Lehigh Valley Railroad Company.

Superintendent's report, December 31st, 1855.

The Morris Canal Company are constructing a branch from the eastern end of the Delaware Bridge to their canal and are erecting conveniences for loading coal into their boats at that point, thereby saving them the risk and expense of ferrying their boats across the river and doubling their boating facilities without any increase of capital.

Annual report for 1865 in minutes of January 2d, 1866.

In addition to the outlets for coal and other freight heretofore existing between the terminus of our road in

New York the Morris and Essex Railroad has recently been opened, connecting with us at Phillipsburg and reaching to Hoboken opposite New York, which it is hoped will give increased facility to our trade in that direction.

Superintendent's report of November 30th, 1865, in minutes of January 2d, 1866.

The work upon the Morris and Essex Railroad has been pushed forward with energy. The track was laid at the eastern end of our bridge where a temporary connection has been made and about 500 tons of coal shipped forward. The road is still incomplete and we must not expect an outlet for a very large tonnage in the early part of the coming year: but as the season advances we may hope that the beneficial effects of this additional avenue tc tide will be felt. This company are providing a large number of coal cars and locomotives.

This year the Morris Canal Company have increased their shipments from Port Delaware very largely over any preceding year. They design making considerable additions to the pockets this Winter, thereby giving additional vent to our tonnage.

Superintendent's report of November 30th, 1866.

Table of coal tonnage delivered to connecting carriers at Phillipsburg for years 1866 and 1865:—

	1866	1865
To Morris Canal.....	111,552	73,965
To The Central Railroad Company of New Jersey.....	582,774	536,383
To Morris and Essex Railroad.....	53,420	498

The Morris and Essex Railroad has recently connected with our track at the eastern end of the new Delaware Bridge at Phillipsburg and is now ready to exchange trade and travel with us. We have during the year over the temporary connection shipped to this road 53,420 tons of coal. This is a fair beginning for a road in an unfinished state without shipping facilities at tidewater and other requisites for a large coal tonnage. We may reasonably

expect a considerable increase next year. We may also anticipate a large trade in iron ore, as the furnaces in our valley use large quantities and the route of the Morris and Essex road is for a considerable distance in close proximity to the rich and extensive iron deposits of New Jersey.

The rich agricultural and mineral districts and the very considerable manufacturing interests on the line of this road must contribute largely to our passenger and miscellaneous freight traffic.

The Morris Canal Company have increased their shipments from Port Delaware by a considerably larger percentage than any of our connections. This will be further augmented as additional shipping facilities are provided.

Minutes of Board of Directors, February 12th, 1867.

Resolved, that the subject of the transportation of coal from the terminus of our road at Easton to the waters of New York and to make such arrangements with connecting roads as will facilitate that business engaged the attention of the board, and its further consideration was confided to a special committee consisting of Asa Packer, John T. Johnson, David Thomas, Asbel Welch and Elisha A. Packer.

Superintendent's report of November 30th, 1867.

Table of coal tonnage delivered to connecting carriers at Phillipsburg for years 1866 and 1867.

	1866	1867	Increase.	Decrease.
To Morris Canal.....	111,552	105,330	.....	6,222
To The C. R. R. Co. of N. J..	582,774	514,945	.....	67,829
To Morris & Essex R. R....	53,420	217,424	164,004	.....

Superintendent's report November 30th, 1868.

Table of coal tonnage delivered to connecting carriers at Phillipsburg for years 1867 and 1868.

	1867	1868	Increase.	Decrease.
To Morris Canal.....	105,530	101,555	.....	3,775
To The C. R. R. Co. of N. J..	514,945	746,491	231,546	.....
To Morris & Essex R. R....	217,424	265,216	47,792	.....

Superintendent's report November 30th, 1869.

Table of coal tonnage delivered to connecting carriers at Phillipsburg for years 1868 and 1869.

	1868	1869	Increase.	Decrease.
To Morris Canal.....	101,555	127,436	25,881	.....
To The C. R. R. Co. of N. J..	746,491	530,664	.....	215,827
To Morris & Essex R. R....	265,216	210,352	.....	54,864

Superintendent's report of November 30th, 1870.

Table of coal tonnage delivered to connecting carriers Phillipsburg for years 1869 and 1870.

	1869	1870	Increase.	Decrease.
To Morris Canal.....	127,436	197,769	70,333	.....
To The C. R. R. Co. of N. J..	530,664	744,081	213,417	.....
To Morris & Essex R. R....	210,352	203,972	.....	6,380

Superintendent's report of November 30th, 1871.

Table of coal tonnage delivered to connecting carriers at Phillipsburg for years 1870 and 1871:—

	1870	1871	Increase.	Decrease.
To Morris Canal.....	197,769	202,153	4,384	.....
To The C. R. R. Co. of N. J..	744,081	541,567	.....	202,514
To Morris & Essex R. R....	203,972	174,826	.....	29,146

It will be noticed that the only one of our outlets to the eastern market which received so large a tonnage from us as it did the year before was the Morris Canal, which shows an increase of two per cent.

A further supplement to an Act to incorporate a company to form an artificial navigation between the Passaic and Delaware Rivers passed December 31st, 1824. P. L. of N. J., 1871, page 444.

This is a supplement to the charter of the Morris Canal and Banking Company, and authorizes it "to lease the canal of said company or any part thereof with all or any of its boats, property, works, appurtenances and franchises to any person or persons or corporation either perpetually or for such time and upon such rents and agreements as may be agreed upon between the said contracting parties, and it shall be lawful for the lessee or lessees in said lease

to use and enjoy the said property and franchises so demised for the term in said lease mentioned."

Minutes of special meeting of directors, April 28th, 1871.

The proposed contract with the Morris Canal & Banking Co. was read and on motion approved by the unanimous vote of those present, except Messrs. Welch and Gatzmer, who were on motion and at their own request previously excused from voting.'

Then follows copy of contract, which is:

Lease by the Morris Canal and Banking Company dated May 4, 1871, lets and demises the entire canal and navigation works from the river Delaware at Phillipsburg in the County of Warren, to the River Hudson at Jersey City in the County of Hudson perpetually thereafter.

Minutes of meeting of directors, June 13th, 1871.

The Board were informed that an interest had been obtained by the Hon. Asa Packer in the stock and bonds of the New Jersey West Line Railroad Company, which gave him the control of the organization of that Company, which he now tendered to the Lehigh Valley R. R. Co. at cost, whereupon it was on motion.

Resolved that this Company hereby assume the purchase of bonds and other securities of the New Jersey West Line R. R. Co. and authorize such further steps as may be necessary to aid in the completion of the line of that road as a through connection for our business.

Messrs. Welch and Gatzmer being excused from voting.

The Vice-President reported that the lease of the Morris Canal had been executed by the officers of both companies and accepted by a majority of the stockholders of the Morris Canal & Banking Co. and had therefore gone into effect.

Mr. De Forest:—In connection with the Superintendent's Report of November 30th, 1871, above referred to,

I offer in evidence lease of May 4th, 1871, by Morris Canal and Banking Company to Lehigh Valley Railroad Company.

(Marked "C. R. R. Co. of N. J., Ex. No. 4, Apr. 7, 1914, C. H. G.")

It is understood that either party may refer to all or any portion of the agreement, as it sees fit.

MR. DEFOREST:—I offer in evidence copy of deed conveying two tracts of land in the City of Perth Amboy, N. J., to Robert H. Sayre; also copy of deed, conveying the same property, by Robert H. Sayre to the Easton and Amboy Railroad Company.

(Deeds marked "C. R. R. of N. J., Ex. No. 5, Apr. 7, 1914, C. H. G.," and "C. R. R. of N. J., Ex. No. 6, Apr. 7, 1914, C. H. G.," respectively.)

The following is a summary statement of said deeds, it being open to either party to put in evidence other extracts therefrom.

The following deed dated July 10th, 1871, conveys to Robert H. Sayre, General Superintendent and Engineer of the Lehigh Valley R. R. Co., two tracts of land containing in all 378.76 acres, which became a part of the coal terminal property of the Easton and Amboy Railroad Co., adjoining Staten Island Sound in the City of Perth Amboy, N. J., and was subsequently conveyed by him with other lands adjoining which he had acquired for the same purpose, to the Easton and Amboy Railroad Company by deed dated December 26th, 1881; hereinafter set out.

George Merrit and Jane E., his Wife,

to

Robert H. Sayre.

Warranty Deed, dated July 10, 1871. Rec'd. July 11, 1871. Book 128 of Deeds for Middlesex Co., p. 468 to 474.

Cons—$151,504.00.

Conveys in fee:

Two tracts of land in the City of Perth Amboy, Middlesex County, N. J.

First tract containing 46 acres of land, bounded north by land of the Amboy Iron Company, East by Arthur Kull or Staten Island Sound, south by land of Alfred Hall and west by High St.

Second tract described, containing 347 25/100 acres and after certain deductions contains 332.76 acres.

The two tracts after the several deductions together amount to 378.76 acres.

Also all the right, title and interest of the parties of the first part to the lands under water in front and easterly of the lands above described in Arthur Kull Sound and all the water rights and privileges appertaining thereto.

Robert H. Sayre.

to

The Easton and Amboy Railroad Company.

Bargain and Sale Deed dated December 26, 1881, recorded December 30, 1881, Book 188 of Deeds for Middlesex Co., p. 183, &c. Cons. $1.00 and other considerations.

Conveys in fee:

Several tracts of land which compose the coal terminal property of the Easton & Amboy R. R. Co. adjoining Staten Island Sound, in the City of Perth Amboy, New Jersey."

MR. DEFOREST:—I offer in evidence further extracts from minutes of Lehigh Valley Railroad Company, as follows:

(Government notes the same objection and reservation.)

Minutes of directors November 14, 1871.

That purchase of a tract of 200 acres adjoining our property near Mt. Carmel and of some tracts adjoining our property at Perth Amboy had been completed.

Report of Directors January 8th, 1872.

Our coal trade has suffered for some years from the want of an independent outlet to tidewater. As a partial remedy your board, early in the year (1871), concluded a

perpetual lease of the property of the Morris Canal and Banking Company by which we came into possession of a line of Canal 102 miles in length, extending from our Rail Road at Phillipsburg to Jersey City, with a Basin of about 60 acres, having a frontage of 1500 feet on the North River directly opposite the City of New York, and also of much valuable property at other points; together with the equipment of boats, mules, &c., &c., necessary for its operation. We assume the payment of interest on their indebtedness; of dividends averaging seven per cent. per annum on the Preferred and Consolidated Stocks; of the Annual Payment of $25,000 to the State of New Jersey, and of a small sum for the maintenance of their organization, amounting in all to $256,000 per annum. Although the business done this year—owing to the stoppage of shipments, consequent upon the strike at the Mines—will fail to produce an income equal to the rent, yet the Board are satisfied that the Lease will result advantageously to this Company. This has been experienced already in the greatly increased capacity for tonnage over our main lines, without material increase of Rolling Stock, in consequence of our being able to discharge the cars into boats at the end of our road and return them at once to the Mines.

In pursuance of the same policy this Company has also obtained an interest in the New Jersey West Line Rail Road Company, whose Road is now open from Summit Station on the Morris and Essex Rail Road to Bernardsville, about 14 miles, and of which 13 miles more are expected to be opened to Newark during the coming Spring. The Charter of this Company reaches to the Delaware River near Milford, N. J., but no arrangements have yet been made for the extension of the Road west of Bernardsville.

In accordance with the policy heretofore approved, we have continued to acquire interests in Coal Lands situated in our various regions, and we have also secured a tract at Perth Amboy, N. J., having great advantages as a point for the shipment of Coal."

MR. DEFOREST:—I offer in evidence the following extracts from the Act incorporating the Perth Amboy and Bound Brook Railroad Company, approved March 11th, 1858; the Act incorporating the Bound Brook and Easton Railroad Company, approved March 1st, 1872, and the Act consolidating these Railroad Companies, approved April 2d, 1872, forming the "Easton and Amboy Railroad Company"; also the following extracts from the minutes of the Lehigh Valley Railroad Company.

(Government notes the same objection and reservation.)

"An Act to incorporate the Perth Amboy and Bound Brook R. R. Co.," approved March 11th, 1858. P. L. of N. J., 1858, p. 278.

Authorizes the construction of a railroad from or within five miles of Bound Brook running through the County of Middlesex and terminating at the City of Perth Amboy.

"An Act to incorporate the Bound Brook and Easton R. R. Co." approved March 1st, 1872. P. L. of N. J., 1872, page 314.

Authorizes the construction of a railroad from some suitable point at or near the village of Bound Brook in the County of Somerset to a suitable point on the Delaware River at or within ten miles of Phillipsburg in the County of Warren, with the privilege of connecting with any railroad or railroads now or hereafter to be built.

"An Act to consolidate the Bound Brook and Easton Railroad Company and the Perth Amboy and Bound Brook R. R. Co. supplementary to the charters of said companies," approved April 2d, 1872. P. L. of N. J., 1872, p. 1017.

This act provides that it shall be lawful for the two railroad companies mentioned in its title to consolidate together into one company to be called the "Easton and Amboy Railroad Company," and by that name shall be a body politic and corporate of said State and shall have perpetual succession and the other usual powers incident to corporations aggregate, and thereupon all and singular the franchises, etc., and all rights, etc., and all the property, real, personal and mixed of the said two named companies respectively granted by or acquired under their respective charters, etc.,

shall vest and become the property and the right of the said Easton and Amboy Railroad Company; and further provides that when such consolidation be effected, said consolidated company shall be governed by laws then in force respecting the said Bound Brook and Easton R. R. Company, and the said Perth Amboy and Bound Brook Railroad Company shall be deemed an extension of the same.

Minutes of Directors' meeting March 12th, 1872.

The Vice-President reported that a charter obtained some years since had been purchased for a railroad from Perth Amboy to Bound Brook, and that a charter had just been granted for a railroad from Bound Brook to Easton, and that subscriptions would be received on the 20th inst., whereupon it was on motion

Resolved that a subscription is hereby authorized to be made of a sufficient number of shares on behalf of this Company to give it the control of the same.

Minutes of Directors' meeting April 9th, 1872.

The Vice-President reported that 11,000 shares of the 20,000 shares authorized by the charter of the Bound Brook and Easton Railroad had been subscribed for in our interest.

Superintendent's report November 30th, 1872.

The necessity for a tide outlet for the coal tonnage of our road becoming each year more pressing, the required authority was obtained during the last session of the legislature of New Jersey to enable us, in connection with a charter previously secured, to build a railroad from Phillipsburg to Perth Amboy, and the necessary surveys having been made to determine the route, active measures were taken early in April and six of the heaviest sections, including a tunnel nearly a mile in length, were put under contract April 17th to be completed April 1, 1874. In August twenty-five of the heavier of the remaining sections were let and work commenced thereon, the light work to be begun at such time as will enable us to complete the whole simultaneously.

Annual report of Board of Directors to stockholders January 21st, 1873.

In continuation of the policy announced in our last report, of providing an independent outlet to tide-water, a charter

was obtained last winter from the Legislature of New Jersey for the Bound Brook and Easton Railroad Company, with authority to build a railroad from Easton to Bound Brook, which Company, by an act passed later in the session, was consolidated with the Perth Amboy and Bound Brook Railroad Company, under the name of the Easton and Amboy Railroad Company. The stock of the consolidated Company was taken by us, and its interests are now identical with those of the Lehigh Valley Railroad Company. A careful survey of the whole line from Phillipsburg, the present eastern terminus of our line, to Perth Amboy, has been made, and all the heavier parts of the work put under contract, so that we hope to have the road in operation some time during next year. The amount expended upon it, at the close of our fiscal year, was about $550,000, a considerable portion of which was for right of way.

Report of Directors to stockholders January 18th, 1876.

The Easton and Amboy Railroad was opened for business about the first of July last as the New Jersey Division of our road.

MR. DEFOREST:—I offer in evidence, in special reference to the Delaware, Lackawanna and Western Railroad, the following portions of the following named Acts:—

The Delaware, Lackawanna & Western Railroad Company was formed by An Act to consolidate the Lackawanna & Western and the Delaware & Cobbs Gap Railroad Company under the name of the Delaware Lackawanna & Western Railroad Company passed by the Legislature of the State of Pennsylvania and approved March 11, 1853, Pennsylvania Laws 1853, No. 123.

The Warren Railroad Company was incorporated under an act of the Legislature of New Jersey entitled An Act to incorporate the Warren Railroad Company approved February 12, 1851, P. L. of N. J. 1851, p. 5., for the purpose of constructing a railroad from some suitable place on the Delaware river not more than five miles above the Delaware Water Gap by the most feasible route to intersect the

road of the Central Railroad Company of New Jersey at or near New Hampton, situate in the County of Hunterdon.

MR. DEFOREST:—I offer in evidence Agreement of January 27th, 1854, between the Central Railroad Company of New Jersey, the Warren Railroad Company and the Delaware, Lackawanna and Western Railroad Company, and ask that the same be marked as an exhibit.

(Marked "C. R. R. of N. J., Ex. No. 7, Apr. 7, 1914, C. H. G.")

The following summary statement thereof shall be deemed in evidence, subject to the same right on the part of either party to have printed the whole agreement, or any parts thereof, in its original form:—

AGREEMENT made January 27, 1854, between the *Central Railroad Company of New Jersey*, the *Warren Railroad Company* and the *Delaware, Lackawanna & Western Railroad Company*. In this agreement the Lackawanna Company covenants to continue the construction of the Southern Division of their Railroad from Scranton to the bridge across the Delaware River, located by the Warren Railroad Company. The Warren Company covenants to proceed immediately with the construction of their road from and including the bridge over the Delaware River to an intersection with the Central Railroad near Hampton Summit; that the track shall be laid of the wide or six foot gauge uniform with that of the Lackawanna Company. The Central Company agrees to lay a third rail on their track from the point of junction near Hampton Summit to Elizabethport so as to give a continuous line of six foot gauge across New Jersey, Pennsylvania and New York from Staten Island Sound to Lake Ontario and Lake Erie. The Lackawanna and Central Companies agreed to take stock in the Warren Road and guarantee the mortgage bonds to enable the Warren Company to construct its railroad. The Lackawanna Company agreed that upon the opening of the Warren Railroad they would take a lease of the same. The Central Company agreed to build a second track of six feet gauge from Hampton Summit to Elizabethport whenever the tonnage of coal

and other freight over their road and the Warren road should amount to 400,000 tons per annum. The three companies covenanted and agreed that they would make the railroads of the other parties their main channel of business for passenger, freight and coal at any place or point on either of the said railroads, or at any place or point to which either of said roads was the direct route; that they would not discriminate against any party to the agreement in favor of any other railroad company doing business with the same place or point; either on passengers or freight, or in favor of any other coal company on coal designed for local use. The Central and Lackawanna companies agreed that each would furnish ample passenger and freight trains for the accommodation and immediate transportation of all passengers and freight brought to the point of junction at Hampton Summit. The Central Company agreed to receive the coal trains which the Lackawanna Co. should regularly deliver to them at Hampton Summit and promptly transport them for the price named in the agreement with their own engines to such coal station or stations as the Lackawanna Co. might establish on the Sound near Elizabethport, or make other delivery at Elizabethtown at the option of the Lackawanna Co. The Central Co. also agreed to transport the empty cars from Elizabethport to Hampton Summit and deliver the same to the Lackawanna Company free of charge. The agreement further provides for the rates to be charged and the division thereof between the companies. The Central Company agreed to procure for the Lackawanna Co. a lease on the waterfront at Elizabethport for dumping grounds and docks for the transaction of business brought over the proposed through line. It was further provided that the duration of said contract should be perpetual, but in July, 1860, and in July every five years thereafter, if required by either party, it should be subject to revision to the end that perfect equity and justice might be obtained in the operation of its provisions.

MR. DEFOREST:—I state as a fact, that, under the provision for the revision of that agreement every five years, it was revised as to rates in 1860, 1865 and 1870.

I offer in evidence the following summary statement of the Act of March 5th, 1857, authorizing the Delaware, Lackawanna and Western Railroad to hold lands in Essex County, N. J., and to operate a connecting railway in that State:—

Under An Act to authorize the Delaware, Lackawanna & Western, incorporated by an act of legislature of Pennsylvania to hold lands in the County of Essex in the State of New Jersey, and to lease or operate a connecting road in this state, approved March 5, 1857, P. L. of N. J. 1857, page 76 (which recites that the legislature of Pennsylvania by an act approved March 8, 1856, authorized the Lackawanna Co. to purchase and hold at or near Elizabethport, N. J., such quantity of land as might be necessary for depot, wharfage and coal yard accommodations for their business not exceeding 50 acres, and by a further act approved April 4, 1854, authorized said Company to lease the Warren Railroad) the Lackawanna Co. was given authority to purchase and hold at or near Elizabethport, in the County of Essex, in the State of New Jersey, such quantity of land as may be necessary for depot, wharfage and coal yard accommodations, and further authorized said Lackawanna Co. to lease the Warren Railroad.

MR. DEFOREST:—I also offer in evidence the following summary statement of the lease between the Warren Railroad Company and the Delaware, Lackawanna and Western Railroad Company, dated October 1st, 1857.

It is understood that either party may refer to all or any portion of said lease, which is marked "C. R. R. of N. J., Ex. No 8, Apr. 7, 1914, C. H. G."

By a lease between the Warren Railroad Company and the Delaware, Lackawanna & Western R. R. Co. dated October 1, 1857, the Warren Company granted and demised to the Lackawanna Co. its railroad commencing at the center of the railroad bridge across the Delaware River, being the point of connection of the railroads of the two companies, and thence running through the counties of Warren and Hunterdon in the State of New Jersey to its connection with the Central Railroad at a point known by the name

of the Junction, for and during the full term and continuance of the legal existence of the Warren Company.

MR. DEFOREST:—I also offer in evidence the following summary statement of the acquisition of land at Elizabethport, N. J., by the Delaware, Lackawanna and Western Railroad Company, and the construction of wharves thereon:—

The Lackawanna Company under its authority to acquire and hold lands at Elizabethport, N. J., obtained title to a tract of land on Staten Island Sound consisting of about 36 acres by the following deeds:

(1) Made by Ralph H. Isham and wife and others dated July 23, 1855, and recorded February 23, 1856, in book 218 of Deeds for Essex County, page 19, &c.

(2) Made by Wm. E. Dodge and wife and others dated September 9, 1857, and recorded December 13, 1859, in Book 5 of Deeds for Union Co., page 605, &c.

(3) Made by John H. Trumbull and others dated December 19, 1867 and recorded January 6, 1868, in Book 26 of Deeds for Union County, page 528, &c.,

and upon this land so acquired, at considerable expense it constructed and maintained wharves, piers and pockets for the purpose of disposing of and trans-shipping the coal tonnage and other freight originating on its railroad in the State of Pennsylvania, which was used by said Company up to the time it withdrew its traffic over the Central Railroad in the early seventies.

MR. DEFOREST:—Also the following summary statement relating to the Morris and Essex Railroad, and its incorporation under the Act of January 29th, 1835:—

"The Morris and Essex Railroad Company was originally incorporated under an act entitled An Act to incorporate the Morris and Essex Railroad Company passed January 29, 1835, P. L. of N. J., 1835, page 25, to construct a railroad from Morristown to Newark or Elizabethtown, and by subsequent legislation it was enabled to build from Morristown to Phillipsburg about 1866.

MR. DEFOREST:—I also offer in evidence lease of the

Morris and Essex Railroad to the Delaware, Lackawanna and Western Railroad, dated December 10th, 1868, to be marked as an exhibit.

(Marked "C. R. R. of N. J., Ex. No. 9, Apr. 7, 1914, C. H. G.")

The following is a summary statement thereof, it being understood that either party may have printed the whole lease or any part thereof:—

Under a lease made by the Morris and Essex Railroad Co. to the Delaware, Lackawanna & Western Railroad Co. dated December 10, 1868, the Morris and Essex Co. granted and demised to the Lackawanna Co. their railroad extending from the Hudson River at Hoboken to the Delaware River at Phillipsburg in the State of New Jersey for and during the full term of the continuance of the charter of the Morris and Essex Co.

Mr. DeForest:—I offer in evidence the following extracts from the minutes and annual reports of the Central Railroad Company of New Jersey, particularly relating to the Delaware, Lackawanna and Western Railroads.

(Government notes the same objection and reservation, and the further special objection to so much of the extract from the Director's Report of January 1st, 1871, as attempts to state the legal effect of the contract between the Central Railroad of New Jersey and the Delaware, Lackawanna and Western Railroad.)

Superintendent's report, dated September 10, 1870, in minutes of directors' meeting, September 19, 1870.

The Lackawanna freight tonnage which, westward bound, has been fairly maintained through the 8 mos. of 1870, but nearly three-fourths of their eastward tonnage to Elizabethport and New York, has been diverted to the Morris & Essex Railroad at Washington Junction for the past 3 months.

Report of Directors to Stockholders January 1, 1871.

The Delaware, Lackawanna & Western Railroad Co.

Many inquiries have been made about the present position of matters between the Delaware, Lackawanna and

Western Railroad Co. and the Central. The contract between the companies is a perpetual one, and binds the bulk of their business of all kinds to this avenue. The lease of the Morris and Essex Railroad by the former has resulted in the diversion of most of the passenger and freight traffic of the Scranton road to that route. As yet the coal business is mainly carried over our road to the wharves at Elizabethport, owned by the D. L. & W. As this transfer is clearly in violation of the contract under which the broad gauge was laid on the Central road exclusively for this business, suit was commenced at the close of the year for damages up to that time, and a fresh suit will have to be brought each year, forever increasing damages, unless an amicable adjustment is proposed and carried out.

Superintendent's Report dated June 10, 1871, in minutes of directors, June 12, 1871.

The total earnings of the Central and L. & S. Divisions for May, including miscellaneous receipts, will reach $750,000, which amount, considering our short tonnage for the Lehigh Valley and Lackawanna roads, and the decline in westward and Delaware and Lackawanna & Western passenger business should be considered a handsome total.

For the next two years there was considerable litigation between the Central and Lackawanna companies because of the diversion of traffic (notwithstanding the perpetual agreement of 1854 and its revisions) from the Central Railroad to the Morris & Essex Railroad.

Moses Taylor, a Director of the D. L. & W. R. R., was a Director of The Central Railroad Company of New Jersey previous to 1871 in the report of that year, and of subsequent years his name does not occur.

Mr. DeForest:—I also offer the following summary statement relating to the Pennsylvania R. R. Co. which brought about the dissolution of the so-called Allentown Route to the West of which the Central Railroad of New Jersey was a part:

AGREEMENT made February 18, 1863, between the *Pennsylvania Railroad Company*, the *Philadelphia & Trenton Railroad Company*, both of Pennsylvania the *Delaware & Raritan Canal Co.*, *Camden & Amboy Railroad & Transportation Company* and the *New Jersey Railroad and Transportation Company*, all of New Jersey, recites that the convenience of the public demands that a connection should be made between the Philadelphia & Trenton Railroad, the Pennsylvania Railroad and other railroads terminating at Philadelphia, whereby passengers and freight going beyond or through Philadelphia, can pass without delay or inconvenience, thus perfecting the great central route between the East and the South, Southwest, West and Northwest, and in obedience to said demand the parties hereto have arranged for such connection and to transact the through business jointly on said roads.

The Pennsylvania Railroad Company agrees to seek to obtain, as soon as possible, the necessary authority and obtain the necessary right of way and lay out and construct a first class railroad from a point near 35th Street to some point on the Philadelphia & Trenton Railroad at or near Frankford.

The Pennsylvania Company agrees, as soon as the said connecting road shall be constructed ready for use, to execute and deliver a lease of said connecting road to the Philadelphia & Trenton Company for the term of 999 years, subject to certain rents, terms and conditions.

Provides for further connections with the Junction railroad and the Philadelphia, Wilmington and Baltimore Railroad and leasing the same, extending to the passenger depot and provides for suitable and convenient offices and arrangements in the new passenger depot to be built by the Pennsylvania Company near Market Street in West Philadelphia, so located and contrived that first class accommodations shall at all times be given to passengers to or from New York by the roads of the respective parties.

Provides all traffic from or to the city of New York

or the vicinity thereof or any point beyond said city which might be controlled by the parties, shall, during the continuance of this agreement and the lease, pass over the said connecting railroad to be constructed, and that the Pennsylvania Company shall discriminate to such extent in favor of joint routes as may be sufficient for the purpose of causing all through traffic to pass over the said connecting railroad and railroads of the other parties, it being the intention of the parties thereto that none of the traffic thereafter passing between Pittsburgh, Erie and other points and New York over the Pennsylvania Railroad shall be diverted to any competing route on reconsignment at Harrisburg or Philadelphia, or in any other way, but that the same shall pass over the said connecting railroad and the railroads of the respective parties.

The Philadelphia and Trenton Company, the Delaware and Raritan Canal Company and the Camden and Amboy Company also agree to make discrimination in favor of said route.

As many passenger trains shall be run that the public wants may from time to time require between New York and Pittsburgh over the route contemplated to meet the competition of other through routes between New York and the West.

An Act to incorporate the Connecting Railway Company, P. L. of Penna., 1863, page 456.

Provides for the organization of a railway company to be known as the Connecting Railway Company, with power to lay out, construct, use and operate single or double track railways commencing at some point on the Philadelphia and Trenton Railroad, by a proper connection therewith at or near Frankford and extending thence by such practicable route as may be selected by said company to connect with the Junction or Pennsylvania railroads in the City of Philadelphia.

An Act to validate and confirm certain agreements between the companies owning the railroad lines between New York and Philadelphia approved February 27, 1867, P. L. of N. J., page 114, recites that it is desirable

that the railroad lines between New York and Philadelphia, forming by their connection essentially one line, should be more closely united in interest and management; that the Delaware and Raritan Canal Company and the Camden and Amboy Railroad and Transportation Company, known as the joint companies, own one portion of said lines and the New Jersey Railroad and Transportation Company own another portion thereof, and they have made or are about making an agreement for a consolidation.

Provides that said companies be authorized to make such agreement for consolidation and that such agreement or agreements heretofore made or hereafter to be made by and between the said companies, or by and between them or any of them and the Philadelphia and Trenton Railroad Company, is validated, ratified and confirmed.

Agreement made June 12th, 1867, between the Pennsylvania Railroad Company, the Philadelphia and Trenton Railroad Company of Pennsylvania, the Delaware and Raritan Canal Co., the Camden and Amboy Railroad and Transportation Company and the New Jersey Railroad and Transportation Company of New Jersey, supplementary to an agreement dated February 18th, 1863, is a further traffic agreement between the parties.

Indenture made January 1st, 1868, between the Connecting Railway Company, the Pennsylvania Railroad Company and the Philadelphia and Trenton Railroad Company, all of the State of Pennsylvania.

Recites the agreement of February 18th, 1863, providing for the construction of the Connecting Railway and leasing of same, and that the said railroad known by the name of the Connecting Railway, has in pursuance of the said agreement been constructed for the purpose of connecting the Pennsylvania Railroad with the Philadelphia and Trenton Railroad, forming, by the aid of the railroad known as the Junction Railroad and tracks of the Pennsylvania Company in West Philadelphia, a steam railway connection between the several companies mentioned.

The Connecting Company grants, bargains, sells and

demises unto the Philadelphia and Trenton Company its railroad extending from its two connections with the Pennsylvania Railroad, one near Thirty-fifth Street and the other near Fortieth Street, in West Philadelphia, to its connections with the Philadelphia and Trenton Railroad at or near Frankford for and during the term of 999 years from the date of said agreement.

History of the Pennsylvania Railroad, by Colonel William Bender Wilson—Volume 1, page 181.

The original decisions of the board of directors was in favor of Twelfth and Market Streets, where property had been secured; but the increased facilities in the way of the street passenger railways offering a speedy means of local transfer inclined them, in 1860, to reconsider their determination, and to locate the station on the west side of the Schuylkill on the flats adjoining the Market Street Bridge. Operations were deferred on account of the financial stringency, and of anticipated changes in the policy of the Camden and Amboy Railroad Company as related to its entrance into the city. Out of the latter came the Connecting Road, which was built by a corporation of the same name organized April 4, 1863. The termini of the Pennsylvania and the Philadelphia and Trenton Railroad Companies in Philadelphia being widely separated, the cost of transfer of freight and passengers from points on one line destined to points on the other became a serious question. To decrease that cost and to bring back traffic to the Philadelphia Division, which had been diverted to other channels by the delays and obstructions of transfer, the Pennsylvania Railroad Company furnished the means for the Connecting Railway Company to construct a railroad from a point at Mantua to a point on the Philadelphia and Trenton Railroad at Frankford, a distance of 6.75 miles. Surveys for this railroad were made in 1863, construction begun in 1864, and road completed in June, 1867. It was opened for freight July 1st, 1867, and for passenger traffic October 1st, 1867. This road brought Harrisburg and the West, via Philadelphia,

within 12 miles of the distance to New York as via Allentown, and brought increased revenues from increased traffic passing over the whole of the main line between Philadelphia and Pittsburgh. The determination to build the Connecting Railway was followed by the erection of a passenger station on Market Street west of Thirtieth Street.

That station was occupied and Eleventh and Market abandoned on the 16th of October, 1864. It consisted of a stone building, fitted up for the accommodation of passengers and ticket offices. A frame car shed, 57 feet wide by 337 feet long, constructed from the material of the building on Logan Square, in which the Great Sanitary Fair had been held, connected with it. To these were added a brick building seventeen feet six inches by eighty-three feet six inches, for use as a baggage-room. In the following year, 1865, a brick building, thirty-seven by sixty-five feet, for ticket office and waiting room, was further added to it. In 1867, the Connecting Road being completed, a station for the use of New York trains was constructed adjacent to it. This latter consisted of a brick building, containing waiting-rooms, offices, &c., and a frame shed for shelter of cars. To those was added, in 1868, a brick office twenty by twenty-five feet.

A lease and contract dated June 30, 1871, between the Delaware and Raritan Canal Company, the Camden and Amboy Railroad and Transportation Company and the New Jersey Railroad and Transportation Company merged into and known as "The United New Jersey Railroad and Canal Company," and the Philadelphia and Trenton Railroad Company to the Pennsylvania Railroad.

Recites that the lessors owned canals and railroads and other property, real and personal, in the States of New Jersey and Pennsylvania, between Jersey City and Philadelphia and other points in said states, together with rolling and floating stock for the operation of same, and that it is expedient for the said united companies that an agreement be entered into with the Pennsylvania Railroad Company for the connection or consolidation of business.

The lessors grant, demise and farm let unto the lessee all and singular their canals, bridges and railroads, with their appurtenances, and the floating stock, rolling stock, chattels and other property, real and personal of whatsoever kind and wheresoever situate, and all the franchises, rights and privileges of the lessors thereto respectively belonging or in anywise appertaining for the term of 999 years.

An Act to validate and confirm said lease and contract between the companies now known as the United New Jersey Railroad and Canal Company and the Pennsylvania Railroad Company, approved March 27, 1873, P. L. of N. J. 1873, page 1298. This act validates, ratifies and confirms the lease made between the United Companies and the Pennsylvania Company, dated June 30, 1871.

WILLIAM UNRUH, having been duly sworn, was examined as follows:—

By MR. DEFOREST:

Q. Where do you now reside A. In Germantown, Philadelphia.

Q. What is your age? A. Sixty-six.

Q. Are you now retired from active business? A. Yes, sir.

Q. What was your business before you retired? A. Civil engineer.

Q. And railroad official? A. I was a division engineer for the Lackawanna Railroad, on the Morris and Essex Division.

Q. When did you commence the practice of your profession? A. You might say in 1868; early in 1868.

Q. Where? A. In Pottsville, with Joseph S. Harris and his brother, who were a firm of engineers doing general work. We did work for the Girard Estate in their collieries and other collieries in the Schuylkill region, and also for the Lehigh Valley Railroad.

Q. Are you, and have you been all your life, familiar with the coal regions of Pennsylvania? A. Yes, sir.

Q. And are you, and during your entire life have you been, familiar with the railroads running from the coal

regions to tidewater at New York, and particularly with the railroads of the Delaware, Lackawanna and Western, the Central Railroad of New Jersey, the Lehigh Valley and the Lehigh and Susquehanna? A. Practically since 1868, I have been familiar with conditions on those roads.

Q. Have you ridden on all of them frequently? A. Yes, sir.

Q. Know the country through which they run? A. Yes, sir.

Q. When did you first have official connection with any one of these railroads? A. January 1st, 1869.

Q. With what one? A. The Lackawanna.

Q. You mean the Delaware, Lackawanna and Western? A. The Delaware, Lackawanna and Western.

Q. And when you speak of the Lackawanna in your testimony, you mean the Delaware, Lackawanna and Western? A. The Delaware, Lackawanna and Western.

Q. Was that official relation continued for many years? A. I was with them from January 1st, 1869, until December 16th, 1899, continuously.

Q. In what capacities? A. As topographer for the first year, and as assistant to Mr. John Brisbin in obtaining the right-of-way in the latter part of 1869 and 1870, and since that time as division engineer.

Q. Division engineer of the entire road? A. Of the Morris and Essex Division. I might explain that for probably 1871 and 1872 I was division engineer for the Eastern Division; afterwards, after 1872, for the whole road of the Morris and Essex.

Q. Was Mr. Joseph S. Harris chief engineer of the Morris and Essex Railroad at the time when you were first employed by him? A. Yes, sir.

Q. And continued such how long? A. I think he was chief engineer until some time in 1871.

Q. Was he the same Mr. Joseph S. Harris who afterwards became vice-president of the Central Railroad Company of New Jersey? A. I do not know whether he was vice-president of the Central. He was president of the Philadelphia and Reading subsequently. I think when he

left the Morris and Essex, he went with the Lehigh Coal and Navigation Company.

Q. You know that he was at one time president of the Reading and that he was at another time president of the Lehigh Coal and Navigation Company? A. Yes, sir.

Q. At the time when you were first familiar with these railroads, in the late 60's and previous to 1871, when the lease of the Lehigh and Susquehanna Railroad to the Central Railroad was executed, did the Central Railroad furnish the line by which the traffic of all these roads, that is, the Lehigh Valley, the Delaware, Lackawanna and Western and the Lehigh and Susquehanna, came to tidewater at New York harbor? A. The major portion of the traffic. There was some small portion of the traffic from those roads that went over the Morris and Essex, but the major portion of it went by the Central of New Jersey.

Q. Did all the coal traffic of the Lehigh Valley pass over the Central of New Jersey to tidewater, so far as you know? A. So far as I know, except what small amount of coal was used locally on the Morris and Essex, Lehigh coal. There was a very small portion of Lehigh coal that came on the Morris and Essex for local consumption.

Q. From the Lehigh Valley Railroad? A. From the Lehigh Valley Railroad.

Q. And did all the coal coming from the Delaware, Lackawanna and Western pass over the Central of New Jersey, except a small amount over the Morris and Essex? A. Yes, sir, until the latter part of 1870.

Q. Until the latter part of 1870? A. Yes.

Q. When did it first become known that the Delaware, Lackawanna and Western and the Lehigh Valley were seeking independent outlets to tidewater, which would divert their coal traffic to those outlets and take it away from the Central Railroad of New Jersey? A. I have no data by which I could form an opinion as to when the Lackawanna sought a separate outlet, but I presume it was some time in 1868; but the Lehigh Valley sought a separate outlet about 1870.

Q. Were the facts generally known? A. Yes, sir.

Q. Talked of in the railroad world? A. Yes, sir.

Q. Was the coal traffic of the Lackawanna afterwards lost to the Central Railroad of New Jersey? A. It was diverted to the Morris and Essex.

Q. When did it begin to be diverted? A. Some time in the latter part of 1870.

Q. Was the coal traffic from the Lehigh Valley afterwards diverted and lost to the Central Railroad of New Jersey, and if so, when? A. I think they completed their Easton and Amboy road about 1873, or early in 1874, and then the traffic was taken away from the Central Railroad of New Jersey and sent to Amboy.

Q. During the period that the coal traffic of the Lackawanna passed to tidewater over the Central Railroad, at what point did it come upon the Central line? A. Hampton Junction.

Q. In New Jersey? A. Yes, sir.

Q. And went to what point? A. Elizabethport.

Q. Did the Lackawanna have a coal terminus at Elizabethport? A. Yes, sir; they had a large property there, with coal wharves.

Q. With coal wharves built upon it? A. With coal wharves built upon it.

Q. Was that the situation when you first become connected with the Lackawanna and the Morris and Essex? A. Yes, sir.

Q. Had the Jersey Central been specially constructed with a view to carry the coal traffic of the Lackawanna between Hampton Junction and Elizabethport? A. Yes, sir; they had to lay a third rail.

Q. Why a third rail? A. On account of the difference in gauge. The Delaware, Lackawanna and Western was a broad gauge, six-foot gauge, and the Central Railroad was the standard gauge, four feet eight and a half.

Q. Do you know how long any coal traffic from the Lackawanna continued to pass over the Jersey Central? A. Until about 1876, I think, or 1877.

Q. Was this third rail then taken up? A. Yes, sir.

Q. Do you recall when the Lackawanna leased the Morris and Essex? A. January 1st, 1869, was the date upon which they took possession. I do not know the date of the lease.

Q. When the Delaware, Lackawanna and Western and the Lehigh Valley made their plans for independent routes to tidewater, and for diverting their traffic from the Jersey Central, what connection into the coal regions did the Jersey Central have left? A. The Lehigh and Susquehanna.

Q. Was that the only one? A. That was the only one; yes, sir.

Q. What circumstances led to the lease of the Lehigh and Susquehanna Railroad to the Central Railroad of New Jersey? A. The Central, in order to retain any traffic at all, were compelled to lease that road. It was the only one left they could get.

Q. What would have been the position of the Jersey Central, after the withdrawal of the Lackawanna traffic and the Lehigh Valley traffic, unless that connection had been maintained? A. They would have been left without anything except a local traffic, between Phillipsburg and Jersey City.

Q. When did the Lackawanna begin its preparations for a coal terminus other than at Elizabethport, other than a coal terminus reached over the Central Railroad? A. You mean the building of wharves at Hoboken?

Q. I mean the building of wharves for the shipment of coal at other points. A. I forgot whether it was the latter part of 1869 or early part of 1870, they started the construction of a coal wharf at Hoboken, to accommodate the coal coming from the Lackawanna road.

Q. That was an extensive terminal, was it not? A. Yes, sir.

Q. And its construction, and the purpose for which it was constructed, was notorious, was it not? A. Yes, sir, well known. I mean to say, the fact of the construction of those wharves was well known.

Q. Are you familiar with the fact that the Lehigh Valley leased the Morris Canal? A. Yes, sir.

Q. When was that? A. I do not recall the date. It was either 1869 or 1870, very early in the seventies.

Q. After that lease did the Lehigh Valley divert any other coal tonnage from the Central Railroad to the canal? A. They used the canal for shipping considerable coal.

Q. Do you remember the through line to the West, established over the Jersey Central to Easton, thence over the Lehigh Valley to Allentown, thence over the Reading to a connection with the Pennsylvania and over the Pennsylvania west? A. Yes, sir.

Q. Was that a well known established main line west from New York? A. It was. It was the main thoroughfare for passengers between New York and Pittsburgh.

Q. Did it continue as such until the Pennsylvania acquired the united railroads of New Jersey and diverted its traffic via Philadelphia? A. I think so.

Q. When was that? A. I think that was either 1870 or 1871.

Cross examination.

By MR. KINGSBURY:

Q. In the late sixties were the Lehigh Valley, the Lehigh and Susquehanna and the Delaware, Lackawanna and Western the only railroads by which coal came from the coal regions toward tidewater? A. I think so.

MR. REYNOLDS:—Do you mean tidewater at New York?

MR. KINGSBURY:—Tidewater at New York.

THE WITNESS:—I think so. There might have some gone down the Belvidere and Delaware to Trenton and from there back on the Jersey Railroad and Transportation Company, now part of the Pennsylvania system; but I have no knowledge of any shipments that went that way. It was rather a roundabout way.

Q. Did any come from Tamaqua to Port Clinton and then over the Allentown Railroad, as shown on this map? (Referring to C. R. R. of N. J. Exhibit 1.) I see this is a very old map, however, 1854. A. That would not be the natural route of coal, sir; but there might have some been

shipped that way. The natural route of coal originating at Tamaqua would be Philadelphia, Port Richmond, via the Reading.

Q. Do you know whether any came via Philadelphia to New York tidewater? Admitting that it is a roundabout route, did any come that way? A. I have an idea that they may have shipped by vessels from Port Richmond to New York, but I have no positive knowledge of that fact.

Q. Were you familiar with the anthracite coal traffic at that time? A. Yes, sir.

Q. Do you remember at all what the relative proportions of these different routes were, in the amount of anthracite which they transported to New York tidewater? A. No, I could not give the tonnage. I was only familiar with the general conditions.

Q. That is what I was asking, as to their general proportions; not the exact tonnage, of course. A. I was always under the impression that the majority of the coal from the coal regions, from the Schuylkill region went to Philadelphia and from the Lehigh Region the major portion would go to New York. That would be its natural outlet.

Q. And it was about equally divided between these three roads you have mentioned, the Lehigh Valley, the Lehigh and Susquehanna and the Lackawanna? A. I do not know what the proportion of tonnage would be to each road, but I imagine that the Lackawanna sent the major portion of the tonnage down.

Q. The Lackawanna sent the major portion? A. I should imagine so.

Q. And then, as between the Lehigh and Susquehanna and the Lehigh Valley, which of those carried the greater amount? A. I rather think the Lehigh Valley must have carried the major portion.

Q. So that the Lehigh and Susquehanna was the least important of the three? A. I might modify that statement by saying that at that time, I have an idea, the Lehigh Valley had not control of so many collieries as the Lehigh

and Susquehanna had, that is, as a company; but I rather think that the Lehigh Valley had the major tonnage, by reason of having connection with more independent operators.

Re-direct Examination.

By Mr. DeForest:

Q. Previous to the lease of the Lehigh and Susquehanna Railroad by the Central Railroad of New Jersey in 1871, did the Lehigh and Susquehanna send any of its coal to tidewater otherwise than over the Central Railroad? A. They sent considerable coal to Hoboken over the Morris and Essex. They had a dock there especially built for their accommodation; we called it the Wilkes-Barre dock, and the coal came from, I think it was the Wilkes-Barre Coal Company, which was owned probably by the Lehigh and Susquehanna, or controlled by them.

Q. And did the Lehigh and Susquehanna cease to send its coal by that route after the lease? A. Yes, sir; after the Central Railroad absorbed the Lehigh and Susquehanna.

Re-cross examination.

By Mr. Kingsbury:

Q. Was that Wilkes-Barre Coal Company which you just mentioned the owner of the same coal fields which are now owned by the Lehigh and Wilkes-Barre Coal Company? A. I could not say as to that. We called it the Wilkes-Barre Coal Company at the time, called the pier the Wilkes-Barre pier, and the coal lands, I was always under the impression, were controlled by the Lehigh and Susquehanna Railroad.

Q. Do you know whether the actual corporate name of it was ever the Lehigh and Wilkes-Barre Coal and Iron Company? A. I do not.

Q. Or whether it was ever called the Honeybrook Coal Company? A. I do not know as to that.

Mr. Kingsbury:—Does the company which the witness mentions control practically the same coal lands as

the present Lehigh and Wilkes-Barre Coal Company, one of the defendants in the suit.

MR. REYNOLDS:—No.

GEORGE WOLF, having been duly sworn, was examined as follows:—

By MR. DEFOREST:

Q. Are you auditor of passenger traffic of the Central Railroad Company of New Jersey? A. I am.

Q. How long have you been officially connected with the Central Railroad? A. Since 1858.

Q. What was the first position that you occupied? A. Freight and ticket clerk at Easton, Pennsylvania.

Q. What successive positions have you occupied during your connection with the Central Railroad Company of New Jersey? A. About 1860 I came to the office of the chief clerk of the general passenger agent, and was made his chief clerk in 1882, and I became practically auditor of passenger traffic. My first title was chief clerk of passenger accounts, and then auditor of passenger traffic.

Q. When did you become auditor of passenger traffic? A. When we took back the road from the Reading, on January 1st, 1887.

Q. Have you had an intimate knowledge of the Central Railroad of New Jersey and its leased lines during the entire period of your official connection with it? A. As an employee would, naturally, that is most of the time at its headquarters.

Q. You have traveled over it and all parts of it? A. Yes, sir; all parts of it.

Q. Frequently? A. Quite frequently. I went to Easton every Saturday for many years.

Q. Did you reside at Easton during that time? A. My mother did.

Q. Have you a recollection of the then main route to the West, in the '60's, known as the Allentown route, of which the Central Railroad formed a part? A. Quite a vivid recollection of it: yes, sir.

Q. Were you in the war? A. Yes, sir; I was. I was supposed to be on leave of absence.

Q. That is, you had leave of absence from your railroad duties when you were serving in the war? A. I resigned my position, and Mr. Johnston called me into the office and said to me "You cannot resign your position. You are still in the employ of the company, and your position is there whenever you return."

Q. Who was Mr. Johnston? A. President of the railroad.

Q. You mean John Taylor Johnston? A. John Taylor Johnston, yes.

Q. You know, as a fact, that that Allentown route had a very heavy traffic, so long as it continued? A. Yes; I do.

Q. Did it have any fast freight lines on it? A. I am speaking from my knowledge of freight—the Empire and Union Lines ran over the Allentown Line, but I do not know of any others. I have a recollection of those two lines.

Q. Was there a large livestock traffic? A. Quite a large livestock traffic. The abattoirs at Jersey City here then existed.

Q. Did that traffic continue so long as the line remained open as a through line? A. Yes, sir.

Q. When was it closed as a through line? A. That I cannot tell you—my memory for dates is very poor—only in this way, that it was closed when the Pennsylvania took possession of the New Jersey Railroad and Transportation Company. Then they diverted all their traffic by way of Philadelphia.

Q. Is it a fact that, previous to the control by the Lackawanna of a through line of its own to tidewater, and to the control by the Lehigh Valley of a through line of its own to tidewater, the traffic of both of those roads passed over the Jersey Central to tide at New York? A. Yes, sir.

Q. When you first knew the Central Railroad of New Jersey, was it constructed with a view to receive that

traffic, as well as the traffic from the Lehigh and Susquehanna? A. It was in a position to carry it.

Q. I mean, was the road built with tracks and terminal facilities, double track and so on, with a view to that extensive traffic? A. Oh, yes; undoubtedly.

Q. Do you remember the third rail to carry the traffic of the Lackawanna? A. Very distinctly, I remember it.

Q. Was there any traffic coming to the Central Railroad of New Jersey for which that third rail was used, except the traffic coming over the Lackawanna? A. Not any, except the coal traffic; the coal traffic of the Delaware, Lackawanna and Western.

Q. Was the traffic from all other roads transported in standard gauge cars, as distinguished from broad gauge? A. Yes, sir. Mr. Unruh told you that the Lackawanna was a broad gauge road, six feet gauge, and it was necessary to lay the third rail so as to carry their cars to Elizabethport.

Q. Was all the traffic of the Lackawanna lost to the Central Railroad after that road leased the Morris and Essex Railroad? A. My recollection is, no, sir, not until the Lackawanna reconstructed their road and made it a standard gauge. Then they diverted all their coal to the Morris and Essex.

Q. After the Lackawanna Railroad changed their gauge, so as to correspond with the gauge of the Morris and Essex, was it then diverted? A. All of it; yes, sir.

Q. About when was that? 1875, or before? A. Somewhere in the early '70's. I am not able to give you any dates.

Q. And did the Lehigh Valley begin to divert its traffic from the Central Railroad when it leased the Morris Canal? A. It certainly did, its coal.

Q. Was that traffic entirely diverted when the Easton and Amboy Railroad was constructed? A. Yes, sir.

Q. Was it a matter of common knowledge in the late '60's and 1870, that the Lehigh Valley and the Delaware, Lackawanna and Western planned to divert their traffic from the Central Railroad? A. Yes, sir; it was.

Q. Was there any other connecting line to the coal regions left to the Central Railroad of New Jersey under these circumstances, than the Lehigh and Susquehanna Railroad? A. None other, that I am aware of.

Cross examination.

By MR. COUDERT:

Q. How old a man are you? A. Seventy-two.

Q. You are speaking merely from recollection? You have no documents before you? A. None whatever. I speak from my recollection.

Q. Were you a freight agent during all this time of which you speak? A. No, sir; I was in the passenger business all this time.

Q. Then you did not have anything to do with the anthracite shipments? A. Nothing whatsoever.

Q. You only know about them generally? A. The general knowledge that a man acquires at headquarters.

Q. What connections with other roads, during the time as to which you were testifying, did the Lehigh and Susquehanna Railroad have? A. What other outlets?

Q. Yes. A. There was none other at Easton except our road and the Morris and Essex.

Q. And it shipped over the Morris and Essex, did it not? A. I do not know.

Q. You merely know that it had those two outlets for its coal? A. Yes. They were the only two roads running from Easton, our road and the Morris and Essex.

Q. And it had a physical connection with both of those roads at Easton? A. Yes, sir.

T. B. KOONS, recalled:—

By MR. DEFOREST:

Q. You have already testified as a witness in this case, have you not? A. Yes, sir.

Q. Mr. Coudert wishes to know how old you are. A. Almost sixty-two; in May, sixty-two years.

Q. When did you first begin your career as a railroad officer? A. In the latter part of 1869 I was employed by

the Delaware, Lackawanna and Western Railroad as telegraph operator, on the Morris and Essex Division.

Q. Who was president of the Lackawanna road at that time? A. Samuel Sloan.

Q. Did you have a personal acquaintance with him? A. Yes, sir.

Q. Intimate? A. Quite so. He employed me personally.

Q. Have you been continuously engaged in railroad service since 1869? A. Except about two years on account of failure of health, that I was not engaged in railroad work.

Q. When were those two years? A. It was between 1877 and 1880.

Q. After you were employed by Mr. Samuel Sloan, president of the Lackawanna, for the Lackawanna, did you change your railroad relation? A. Yes, sir. In the early part of 1870 I assumed a position with the Lehigh Valley Railroad.

Q. What position? A. As one of the traffic clerks in the general freight agent's department, at Mauch Chunk.

Q. How long did you remain an official of the Lehigh Valley Railroad? A. I was about five years with them, and, on the opening of the Perth Amboy Division, I came for them to Pier 2, New York,

Q. When did you leave them to enter the employ of the Central Railroad Company of New Jersey? A. I was with them at New York, I judge, for a year and a half, possibly two years, and then I was ordered back to Mauch Chunk to do some rate work, tariff work. I remained with them nearly a year, or quite so, and then I stopped on account of my health, for several years.

Q. When did you first enter the employ of the Central Railroad Company of New Jersey? A. In November, 1880.

Q. Were you born in the coal regions? A. I was born at Treichlers, Pennsylvania.

Q. Is that in the Lehigh Valley? A. Yes, sir.

Q. Have you since boyhood been familiar with the anthracite coal regions of Pennsylvania and with the railroad lines running therefrom to tidewater at New York, including the Delaware, Lackawanna and Western, the Central Railroad of New Jersey, the Lehigh and Susquehanna Railroad, and the Lehigh Valley Railroad? A. Yes, sir.

Q. Previous to the lease by the Central Railroad Company of New Jersey in 1871 of the Lehigh and Susquehanna Railroad, did the chief traffic, and particularly the coal traffic, of these railroads reach tidewater at New York harbor over the Central Railroad Company of New Jersey? A. Yes, sir.

Q. When did it first become known that the Delaware, Lackawanna and Western Railroad and the Lehigh Valley Railroad planned independent outlets, and planned to take their traffic away from the Jersey Central? A. About 1870 the Lehigh Valley commenced to undertake an extension of its own tracks to tidewater, and, about the same time, the Delaware. Lackawanna and Western people secured control of the Morris and Essex Railroad and provided for their own line to tidewater at Hoboken.

Q. Under what business conditions did the Central Railroad Company of New Jersey lease the Lehigh and Susquehanna Railroad? A. The conditions at the time they did lease the Lehigh and Susquehanna Railroad, they were absolutely forced to do so, or else have no business whatsoever. The traffic of the Lehigh Valley had been diverted from them, as well as the Delaware, Lackawanna and Western traffic, by way of Hampton Junction. It left them without any traffic, and simply a local road between Phillipsburg and tidewater.

By Mr. Coudert:

Q. Were you in the employ of the Central Railroad Company of New Jeresy at that time? A. The Lehigh Valley.

By Mr. DeForest:

Q. Are you familiar with the fact that the Jersey Central previous to that time had made very large expenditures on its roadbed, side tracks, its docks, piers and coal pockets,

for the reception of through freight, and particularly coal, from all these railroads to tidewater? A. Yes, sir.

Q. It was, in fact, built to be the trunk line, was it not? A. Yes, sir.

Q. Fed by these three different railroads in Pennsylvania, and to bring their traffic to New York? A. Yes, sir, it was the terminal line for these several large interests at that time.

Q. And it first became manifest about 1870 or 1869 that these roads, the Lackawanna and the Lehigh Valley, were seeking independent outlets, with a view of diverting their traffic? A. Yes, sir.

Q. You are familiar with the former Allentown route to the west, of which the Central Railroad of New Jersey formed a part? A. Yes, sir.

Q. Up to what time did that continue? A. That continued until about 1874 or 1875, but it reduced its tonnage; the tonnage was gradually reduced during that period, from about 1870 to 1871. The Pennsylvania about that time, or previous, had arranged for its own traffic by an extension of its line, in connection with the New Jersey Railroad and Transportation Company by way of Trenton.

Q. Has the Central Railroad since 1871, and since its lease of the Lehigh and Susquehanna, been a competitor in the carriage of coal with the Lehigh Valley and the Lackawanna Companies? A. Absolutely.

Cross examination.

By Mr. Coudert:

Q. Have there been any other competitors? A. Other competitors of the Central?

Q. Yes. A. Yes.

Q. What roads were the other competitors? Will you mention them, please? A. Reading would have been a competitor.

Q. Any others? A. The Pennsylvania, more recently.

Q. Did these other roads that you mention reach the same collieries which the Lehigh and Susquehanna reached? A. The Delaware, Lackawanna and Western and the Lehigh Valley?

Q. Yes. A. No, except after the Lehigh Valley was extended into the Wyoming region. Then there were some collieries that were common with the two lines. The Lehigh Valley in that period handled its coal principally, or secured its coal principally, from the Hazelton district and Beaver Meadow, and the Lehigh and Susquehanna secured its coal from the Summit and Panther Creek districts, and, after the extension of its road to Wilkes-Barre, from the Wyoming district and the same collieries, in some instances, from which the Lehigh Valley secured coal.

Q. You do not know in how many instances? A. No, I could not mention those in detail.

Q. Five or six? A. Yes, possibly that.

Q. Comparatively few, were they not? A. Not many at that time, because the development was not so great in the coal industry at that time.

Q. So that the competition for the coal mined in the same collieries was a very small item? A. It was only to the extent that the traffic was developed. Competition was possibly as great in ratio at that time as it is now, by reason of the enlarged traffic. The competition at that time was very intense between the Lehigh and Susquehanna and the Lehigh Valley Railroad—very marked.

Q. Competition for tonnage, for coal tonnage? A. Yes, sir.

Q. And that competition was not confined merely to those three or four or five collieries to which they both had access, was it? A. No, for the reason I have stated; they did not all reach the same collieries.

Q. It was a general competition for the anthracite coal, as I understand you? A. Yes.

Q. And very sharp and keen, between these roads that you have mentioned? A. Yes, sir.

Re-direct examination.

By Mr. Reynolds:

Q. The Lehigh Valley Railroad is on one side of the Lehigh River and the Lehigh and Susquehanna Railroad is on the other side of the Lehigh River, all the way up, are they not? A. Yes, sir.

ROBERT W. DEFOREST, having been duly affirmed, was examined as follows:—

By MR. REYNOLDS:

Q. What is your relation to the Central Railroad of New Jersey? A. I am vice-president and general counsel.

Q. How long have you been familiar with its affairs? A. My official relation to the Central Railroad Company of New Jersey began at the close of 1873, when I became its general attorney, and that official relation has continued ever since. I was also one of the counsel for the Receiver of the Central Railroad of New Jersey, as well as its general attorney, from 1877 to 1883. I became general counsel of the Central Railroad of New Jersey after ex-Chancellor Williamson's death, in 1893. I became vice-president in 1902, and later vice-president and general counsel, and I became a director on September 21st, 1906. My knowledge of the road and its affairs began in the Summer of 1867, and has been continuous ever since that time.

Q. Who was president of the railroad in 1867? A. John Taylor Johnston.

Q. And what relation was he to you? A. I was engaged to his eldest daughter, whom I subsequently married, and he then became my father-in-law.

Q. What were the connections of the Central Railroad of New Jersey, and its chief business at that time, in the late sixties, when you first had knowledge of it? A. When I first became familiar with the road, it furnished the all-rail route for tidewater coal to New York harbor, and for other traffic, from the Lehigh Valley Railroad, which connected with it at Easton, and for the Delaware, Lackawanna and Western Railroad, which connected with it at Hampton Junction, as well as for the coal brought to it by the Lehigh Coal and Navigation Company over its railroad, known as the Lehigh and Susquehanna Railroad. The anthracite from these three different sources was the chief business of the Central Railroad Company of New Jersey. It was built with a third rail from Hampton Junction to Elizabethport, to accommodate the then broad gauge of the Delaware, Lackawanna and Western Rail-

road, and that third rail ran from the junction of the Central Railroad with the Lackawanna Railroad, from Hampton Junction, to the then coal terminus of the Delaware, Lackawanna and Western Railroad at Elizabethport, which was an extensive tract of some thirty or forty acres of land, with docks and shipping facilities. The Central Railroad Company of New Jersey also at that time had its own coal terminus at Elizabethport, which had been the original coal terminus, and, indeed, the original terminal point of the railroad at tidewater, and, at the time when I first became familiar with the Central Railroad, it was building its new coal terminus, which supplemented the other and was intended to replace the other at Port Johnston, where their coal terminus now is. The road had been extensively developed, by a number of its tracks and sidings, and particularly by its terminals, for the traffic of those three railroads and also for the traffic of the then through line to the west, known as the Allentown route, which started from New York over the Jersey Central, passed on to the Lehigh Valley at Easton, thence over the Reading Railroad to Harrisburg, and thence via the Pennsylvania Railroad west. The business of the Jersey Central itself, as compared with the business which it received from these different lines, was comparatively insignificant and local.

Q. What change in the connections and business of the Central Railroad preceded its lease of the Lehigh and Susquehanna Railroad, in 1871? A. Two or three years preceding that lease, that is, preceding 1871, it became apparent and notorious that the Delaware, Lackawanna and Western and the Lehigh Valley Railroad were proposing to build or control independent lines of their own to tidewater in New York, and to take away their traffic from the Jersey Central. This policy on the part of the Lackawanna road was evidenced by its lease of the Morris and Essex Railroad in 1868, and the withdrawal of its traffic from the Central during the succeeding years; on the part of the Lehigh Valley, by its lease of the Morris Canal, which was consummated in 1871, and by its acquisition of the New Jersey West Line Railroad, or a majority of the

stock of that railroad, a controlling interest in it, a railroad which was projected across New Jersey from tidewater to a connection with the Lehigh Valley, which had extensive terminals on New York harbor at Jersey City, then known as the West Line Grant, and which was only partly subsequently constructed. Now upon the completion of these through lines to carry the traffic of these other roads, all their traffic was lost to the Central Railroad of New Jersey, I do not mean lost immediately, because some of the traffic of the Lackawanna road continued to pass over the Central Railroad up until 1875.

Q. What did the Jersey Central Railroad do under those circumstances? A. The Central Railroad negotiated a lease of the Lehigh and Susquehanna Railroad. That was the railroad of the Lehigh Coal and Navigation Company. At the time of this lease, and previous to it, the Lehigh Coal and Navigation Company was in financial difficulties, and it was brought to the attention of Mr. John Taylor Johnston, then president of the Jersey Central Railroad, that there was an attempt on the part of rival interests to obtain control of it, and he succeeded in negotiating and bringing about the arrangement of March 1st, 1871, by which the Central Railroad Company leased the Lehigh and Susquehanna Railroad. The situation then was that, if the Central Railroad had not succeeded in maintaining that connection as a connecting line into Pennsylvania, the bulk of the Central Railroad's traffic would have been entirely lost, and the Central Railroad would have fallen into the position of a mere local railroad, and all its large investments, made with a view to this extensive traffic from these three railroads, would have been lost.

By Mr. Coudert:

Q. You mean by traffic, coal traffic? A. I mean coal traffic chiefly. I mean also other traffic; merchandise traffic. The Central Railroad at that time was really fighting for its life, and, except for that lease, would not have survived. As a matter of fact, had the Central not leased, or otherwise maintained, that relation, connecting relation, with the Lehigh and Susquehanna Railroad, it would have been abso-

lutely ruined—permanently and irrevocably ruined. It was ruined, at least temporarily, by the withdrawal of the traffic of those two railroads. As I stated, some of that traffic continued until 1875, and, chiefly as the result of the withdrawal of the traffic of the Lackawanna road and the Lehigh Valley Railroad, the Central became involved in serious financial difficulties in 1876, and in 1877 passed into the hands of a Receiver, appointed in insolvency proceedings by the Court of Chancery of New Jersey, under the New Jersey Act; and, indeed, its future seemed so hopeless that its stock sold as low as six in the market. During that receivership the Lehigh and Susquehanna Railroad brought proceedings to annul this lease, but, fortunately for the Jersey Central, those proceedings were not successful and the lease was maintained through the receivership, and has been maintained since, as you know.

Q. At what date was that? A. The receivership of the Jersey Central was in 1877. The attempt of the Lehigh Coal and Navigation Company to get back that lease, or to terminate that lease, was also in 1877.

Q. Do you remember on what ground? A. I do not recall precisely. I have the means of refreshing my recollection by looking back at the papers. As I recall, it was on the ground that the rental had not been paid, and that no longer opportunity should be given to the Central to pay up the arrears of rent.

Q. Did that ever go to judgment? A. It went to hearing.

Q. But was not decided? A. It went to hearing and was decided adversely for the Lehigh Coal and Navigation Company. The proceedings were in the United States Circuit Court of Pennsylvania. I am not perfectly certain that it went to actual decree. I know that it proceeded to a point where the final result was made evident to both companies and to the Receiver of the Jersey Central, and that the Receiver of the Jersey Central succeeded in preventing the annulment of that lease. The Central Railroad remained in the hands of a Receiver until 1883.

The conditions of railroad management and public opin-

ion and expectation with regard to railroad organization in these parts of the country served by the anthracite railroads, are entirely different now from what they then were, and from what they were at the time when the Jersey Central was developed to serve as an outlet for these three railroads. The Central Railroad was so developed in the fifties and the early sixties, and its terminals were acquired in the expectation that it would continue to be a trunk line, running through New Jersey and serving those three railroads, as is well illustrated by the map which was put in evidence, which is attached to the report of 1854, and it was only during the latter part of the sixties that it became known that any new policy would be inaugurated by these other two roads to form independent lines to tidewater. The lease of 1871 was forced upon the Central Railroad as a means of self-preservation.

Cross examination.

By MR. COUDERT:

Q. You are a stockholder in the Central Railroad Company of New Jersey? A. I am.

Q. To what extent? A. Between three and four hundred shares.

Q. And your family also hold shares in the Central Railroad? A. Some members of my family do.

Q. To what extent? A. In the aggregate not to a larger extent than I have named. I do not know exactly. I could give you the exact figures if you wished them.

Q. You spoke of some rival interests desiring or attempting to obtain control of the Lehigh and Susquehanna. What were those rival interests? A. I am not certain what particular ones they were, whether the then Lackawanna interests, or the then Lehigh Valley interests, or the Pennsylvania interests, or persons allied with those companies.

Q. The Lehigh and Susquehanna had a large anthracite tonnage at the time of the lease, had it not? A. Yes, sir.

Q. With what roads was it competing for anthracite tonnage at that time? A. With the Lehigh Valley; as I recall, the Lackawanna ——

Q. Any others that you know of? A. Possibly the Pennsylvania, although of that I am not perfectly certain.

Q. The Reading? A. It was competing with the Reading, but not in coal traffic destined to points on New York harbor, so far as I know.

Q. The Reading at that time ran to where, do you remember? A. Philadelphia was its terminus at tidewater.

Q. When did it first begin to run over your road from Bound Brook? A. The Bound Brook connection, the so-called Philadelphia New Line, was completed in 1876. It was not then the Reading. That connection was formed with three railroads, the Jersey Central to Bound Brook Junction; the Delaware and Bound Brook Railroad from Bound Brook Junction to the Delaware River; and the North Pennsylvania Railroad from the Delaware River into Philadelphia It was subsequent to that time that the Reading acquired control of the North Pennsylvania Railroad and the Delaware and Bound Brook.

Q. Did the Central Railroad, at the time of the lease, own any coal lands, either directly or through stock ownership? A. The Central Railroad neither at that time, or at any time, has owned any coal lands.

Q. I say, either directly or through stock ownership. Did it own any stock in any coal companies at that time? A. The Central Railroad, at or about that time, acquired interests in the stock of two or three companies, of which I recall the Honeybrook Coal Company was one and the Wilkes-Barre Coal and Iron Company another.

Q. And that was about simultaneous with the lease of the Lehigh and Susquehanna, was it not? A. Within two or three years before or two or three years after.

Mr. Reynolds:—As a matter of fact, it was not until about 1874.

Mr. Coudert::—Were there not some acquisitions before that?

Mr. Reynolds:—No.

The Witness:—I should have to refresh my recollection by looking at the books, to be sure as to dates.

Q. Your general impression is now that there were ac-

quisitions at or about that time? A. My general impression is that there were acquisitions of stock in anthracite coal companies, or an anthracite coal company, at or about that time, and my recollection would be that it was subsequent to the lease.

Q. You know, as a matter of fact, do you not, that at that time the other roads that you have spoken of as competitive, were engaged in acquiring coal lands? That was the common knowledge of the time, was it not, among railroad men? A. It was the common knowledge at the time that the railroads were either acquiring coal lands, or acquiring stock in companies that owned coal lands. That was a time when the Morris and Essex was authorized to buy coal lands itself.

By Mr. Reynolds:

Q. You do not mean the Morris and Essex? A. When the Delaware and Lackawanna was authorized to buy coal lands, and did buy coal lands, itself, and when it was thought to be the proper and wise policy for railroads to obtain such relations to coal lands as to give them the traffic from coal lands, and when those interested in one railroad or in another railroad were seeking to acquire interests in coal lands so as to dissociate them from other interests.

By Mr. Coudert:

Q. I take it that on questions of policy you are opining and not affirming; is that right? A. I do not quite know just what difference you would put upon those two words. I am affirming.

Q. You are affirming an individual opinion when you speak of policies? A. When I speak of policy, I am giving an individual opinion, but I am also speaking of facts of which I know.

Q. You made a statement in your direct examination, or an affirmation, as to some change in public opinion. What did you refer to? A. I referred to public policy as expressed in general opinion and in legislation, with regard to the relation between railroads in the anthracite region and coal lands.

Q. You were counsel for the Central Railroad in the so-called old Reading case, reported in 226 U. S.? A. Just what case do you mean?

Q. The old Reading case, the case of U. S. *vs.* The Reading, Jersey Central and other railroads, reported in 226 U. S. A. You mean the so-called Temple Iron Company case?

Q. Yes. A. I was.

Q. You were also counsel, were you not, for some of the railroads in the so-called Commodities Clause case, The Delaware and Hudson against the United States, in 213 U. S.? A. I was.

Q. Exhibit B, attached to the Government's petition, is the articles of agreement made in May, 1883, between the Lehigh Coal and Navigation Company and the Central Railroad Company of New Jersey. It is apparently a supplemental agreement. Do you remember whether that was made as a consequence of the litigation that you spoke of between the receiver of the Central Railroad Company and the Lehigh Coal and Navigation Company? A. No, it was not. It was made as the result of, or it followed from, the then lease of the Central Railroad of New Jersey by the Philadelphia and Reading Railroad Company. That lease was opposed by the Lehigh Coal and Navigation Company, and they either started, or it was known that they intended to start legal proceedings to prevent it. The agreement of 1883, to which you refer, embodied a settlement of those questions at issue at that time between the Reading and the Lehigh Coal and Navigation Company, growing out of the lease by the Reading of the Jersey Central. It was that agreement, as I recall, which fixed the minimum and the maximum rental. That agreement was exacted by the Lehigh Coal and Navigation Company as a condition of their not opposing the Reading's lease of the Jersey Central.

Q. You mean the Port Reading lease? A. No.

Q. The earlier lease? A. The lease of 1883, which was terminated during the first receivership of the Reading, because the Reading failed to carry out its terms.

Q. Is that a lease that you advised? A. That is a lease which, so far as my advice went, I opposed, but unsuccessfully. I did everything I could to prevent that lease. Providence intervened to terminate it.

By Mr. Reynolds:

Q. By that lease you mean the lease of the Jersey Central to the Reading? A. Of 1883.

By Mr. Coudert:

Q. That was not the lease, of course, that was declared unlawful in Stockton *vs.* the Attorney-General? A. No; that was a lease of the Port Reading Railroad.

Q. You are familiar with that supplemental agreement of 1883, are you? A. I have been familiar with it, and I am generally familiar with it.

Q. That agreement contains the following clause: "Will cause the development of the Lehigh and Wilkes-Barre Coal Company's lands to proceed *pari passu* with that of the lands of the Philadelphia and Reading Coal and Iron Company, so that the production of the two coal estates shall bear to each other the numerical relation of 28 for the Lehigh and Wilkes-Barre Coal Company to 72 for the Philadelphia and Reading Coal and Iron Company, at least until the production of the Lehigh and Wilkes-Barre Coal Company's land shall reach three million tons per annum; beyond which it shall not be required to be increased." Do you remember how those numerical proportions were fixed at that time? A. I do not. I had nothing to do with the fixing of those numerical proportions.

Q. You only know that they were fixed and counsel were told to put them in the lease, I suppose? A. Yes.

(At 1 P. M. a recess was taken until 2 o'clock P. M.)

T. B. Koons, recalled:—

By Mr. Reynolds:

Q. I want to direct your attention to a letter that appears in the Government Record, by Mr. Fowler to Mr. Baer, on page 315 of the record, and I call your attention to page 318 of the record, where Mr. Fowler states: "The

Jersey Central has now openly given a rebate of fifteen cents per ton on a considerable portion of its tidewater coal, after having quietly done so for years, as I am told, although with the knowledge of some of its competitors—in neither case has the general situation been affected." From your knowledge of conditions at the time that letter was written, can you state whether that reference is to this tariff which I now show you? A. Yes, sir.

MR. REYNOLDS:—That is Interstate Commerce Commission Tariff A No. 3, and from that tariff I wish to read into the record only this paragraph:—

"On consignments transported by C. R. R. of N. J. to Jersey City, N. J., and trans-shipped thence by dray or wagon in connection with C. R. R. of N. J. ferries to foot of Liberty or foot of Twenty-third Street, North River, N. Y., an adjustment of fifteen cents per ton will be made to equalize similar shipments moving over Port Liberty, Communipaw or Port Johnston piers, thence by water."

By MR. REYNOLDS:

Q. That is your tariff which became effective August 29th, 1906, is it not? A. Yes, sir.

Q. Did that tariff remain on file with the Interstate Commerce Commission for several years? A. Yes, sir.

Q. And under that tariff did you make freight rates in strict conformity with the tariff, and make the adjustments as provided therein? A. Yes, sir.

Q. That tariff is no longer in effect, I believe? A. No, sir; withdrawn about three years ago.

Q. In the Government's case, the Government put into the record a number of leases, with different kinds of clauses, by which it was sought to be provided that the lessee should move his tonnage, so far as possible, delivered at the leased properties, over the Central Railroad of New Jersey. Those leases are excerpted in the stenographer's minutes between pages 725 and 731, inclusive (printed pages 353-356). It also appears in the record that a great number of leases have no such clause in them. I show you the stereotyped blank form used by the Jersey

Central for siding agreements for many years. Do you recognize it? A. Yes, sir.

MR. REYNOLDS:—I desire to place in evidence the fifth clause of that agreement, which is a routing clause, reading as follows:

Fifth.—All freight or coal which the party of the second part has to offer for shipment from or which is to be received at said siding or trestle, so far as the party of the second part can control the routing thereof to or from points on or reached via the lines of the party of the first part, shall be shipped over such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similiar service, and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

Q. Is that, and has it for many years been, the general form of siding or trestle agreement which the Company has used in constructing siding facilities and connections for shippers along its line? A. Yes, sir.

Q. Has it been used since the passage of the Interstate Commerce Act and its amendments? A. Yes.

Q. Has it been used generally since the Act was amended to provide for siding connections? A. As I understand; yes, sir.

Q. That section reading that "any common carrier subject to the provisions of this Act, upon application of any shipper tendering interstate traffic for transportation, shall construct, maintain and operate, upon reasonable terms, a switching connection with any private side track where such connection will furnish sufficient business to justify the construction and maintenance of the same." In years past has it been a matter of form to have that clause in such agreements, to persuade the shipper to furnish sufficient business to justify the construction and the maintenance of such sidings and connections? A. Yes, sir.

Q. Has any objection ever been made by any lessee to such a term in any of these contracts? A. Not that I know of.

Q. None has ever been made to you? A. No, sir.

Q. As a matter of fact have you ever followed up and kept track of whether these routing covenants have been observed by the lessees? A. I have not.

Q. You are the one that is interested in the traffic, are you not? A. Yes, sir.

Q. Would there be anyone else in the organization whose duty it would be to follow it up, except yourself? A. I do not think so; no, sir.

Q. Did you ever cancel any lease on the ground that this covenant was broken? A. Never.

Q. Have you ever used such a clause to influence traffic over your road, as far as you can recall? A. No, sir.

Q. Generally speaking, are those trestles or private sidings requiring a separate operating service? A. Yes, sir.

Q. A particular maintenance of the property? A. Yes, sir.

Q. On page 59 of the Government's Petition, in referring to the Lehigh and Hudson River and the Lehigh and New England Railroad Companies, the Government avers that those two roads are "parallel routes of transportation between the anthracite fields and points in New York and New England on the New York Central lines and the lines of the New York, New Haven and Hartford Railroad system, over which anthracite and other freights then (referring to 1904) and at all times since have moved in continuous carriage." Then, after making that averment, they make this averment: "And then as now there was but one other direct rail route between the anthracite fields and central and southern new England." Is that last averment true or untrue? A. Not correct.

Q. How many other direct rail routes between the anthracite fields and central and southern New England are there, which do not involve a haul partly over the Lehigh and New England Railroad or the Lehigh and Hudson River Railroad? A. Seventeen.

MR. COUDERT:—Direct rail routes?

MR. REYNOLDS:—Direct rail routes, yes.

By MR. REYNOLDS:

Q. Did you, at my request, have the Interstate Commerce Commission certify, under the statute, the tariffs covering these seventeen routes? A. I did.

Q. Are these tariffs that I show you those tariffs? A. Yes, sir.

(Mr. Reynolds handed the said tariffs to counsel for the Government.)

Q. Will you hand the Examiner a brief summary describing these seventeen through direct rail routes between the anthracite fields and central and southern New England? A. Yes, sir.

(The witness handed the Examiner the following summary, as requested):—

1. Lehigh Valley R. R. tariff I. C. C. No. D 318, effective October 6th, 1908, and supplements thereto, from Wyoming, Lehigh and Schuylkill regions to points on the Boston and Albany R. R. via National Junction (Jersey City) West Shore R. R. and Boston and Albany R. R.

2. Lehigh Valley R. R. tariff I. C. C. D. 505, effective March 21st, and supplements thereto, from Wyoming, Lehigh and Schuylkill Regions to points on the Central Vermont Railway via National Junction (Jersey City) Boston and Albany R. R. and Palmer, Mass. for Southern Division.

3. Lehigh Valley R. R. tariff I. C. C. No. D 639, effective December 29th, 1913, and supplements thereto, from Wyoming, Lehigh & Schuylkill regions to points on the New York, New Haven & Hartford R. R. via Jersey City and N. Y. N. H. & H. R. R. floats.

4. Lehigh Valley R. R. tariff No. D 409, effective November 21st, 1910, and supplements thereto, from Wyoming, Lehigh & Schuylkill regions to points on the Boston & Maine R. R. via National Junction (Jersey City) West Shore R. R. via Rotterdam Junction & Boston & Maine R. R.

5. Philadelphia & Reading tariff I. C. C. A 340, effective September 13th, 1909, and supplements thereto, from Mahanoy and Shamokin District to points on the Boston & Albany R. R. and Grafton & Upton R. R. via Newberry

Junction, New York Central & Hudson River R. R. via West Albany Transfer and Boston & Albany R. R.

6. Delaware & Hudson Company tariff I. C. C. No. 11,013, effective May 1st, 1912, and supplements thereto, from Wyoming and Scranton region to points on Boston & Maine R. R. via Mechanicsville, N. Y., and Boston & Maine R. R.

7. Delaware & Hudson Company tariff I. C. C. No. 11,-013, effective May 26th, 1913, and supplements thereto, from Wyoming and Scranton region to points on Central New England Railway via Albany, N. Y. C. & H. R. R. via Poughkeepsie, Fishkill Landing and Rhine Cliff, N. Y.

8. Delaware and Hudson Company tariff I. C. C. No. 11,311, effective May 19th, 1913, and supplements thereto, from Wyoming and Scranton region via Mechanicsville, N. Y., Boston and Maine via Millers Falls, Mass. for points in Connecticut and Massachusetts. For points in Vermont via Rutland, Vt., and Rutland R. R. via. Burlington and via. B. & M. and South Vermont.

9. Delaware and Hudson Company tariff I. C. C. No. 11,612, effective January 5th, 1914, and supplements thereto, from Wyoming and Scranton region to points on the Boston and Albany R. R. via Albany or Schenectady, N. Y., and Boston and Albany R. R.

10. Delaware, Lackawanna and Western R. R. tariff I. C. C. 7759, effective November 14th, 1911, and supplements thereto, from Wyoming and Scranton region to points on Boston & Albany R. R. via Utica, N. Y. C. & H. R. R. and West Albany Transfer and Boston & Albany R. R.

11. Pennsylvania R. R. tariff I. C. C. No. 312, effective January 1st, 1910, and supplements thereto, from Scranton, Wyoming, Lehigh and Schuylkill regions to points on New York, New Haven & Hartford R. R. via Jersey City and N. Y., N. H. and H. floats.

12. New York, Ontario & Western R. R. tariff I. C. C. 3926, effective February 14th, 1910, and supplements thereto, from Scranton and Carbondale region to points on Central New England Railway via Campbell Hall, N. Y.

13. New York, Ontario & Western Ry. tariff I. C. C. 4420, effective February 15th, 1911, and supplements thereto, from Scranton and Carbondale district to points on Boston & Albany R. R. via Cornwall, N. Y. West Shore R. R. via Albany and D. & A. R. R.

14. New York, Ontario & Western Ry. tariff I. C. C. 5149 effective February 6th, 1913, and supplements thereto, from Scranton and Carbondale district to points on N. Y. N. H. & H. R. R. via Campbell Hall, Central New England Rwy. and Hopewell Junction and N. Y. N. H. & H. R. R.

15. New York, Ontario & Western Rwy. tariff I. C. C. 5225, effective May 15th, 1913, from Scranton and Carbondale district to points on Central Vermont R. R. via Campbell Hall, N. Y., Central New England Rwy., Hopewell Junction, N. Y. N. H. & H. R. R. via Willimantic, Conn.

16. Erie Railroad tariff I. C. C. No. D 576, effective June 1st, 1911, and supplements thereto, from Wyoming, Scranton and Carbondale regions to points on Boston & Maine R. R. via Newburg, N. Y., West Shore R. R., Rotterdam Junction and B. & M. R. R.

17. Erie R. R. tariff I. C. C. No. D 634, effective November 3rd, 1913, and supplements thereto, from Wyoming, Scranton and Carbondale regions to points on N. Y. N. H. & H. R. R. via Maybrook, N. Y., Central New England Rwy. via Hopewell Junction and N. Y. N. H. & H. R. R.

Q. Did you, at my request, learn about the tonnage of coal which, during the past three years, has moved over the routes of which the Lehigh Valley forms the initial carrier, in this list of seventeen? A. I did.

Q. Will you please state what the tonnage for each year is moving over those routes? A. Lehigh Valley Railroad, for 1913, 718,056 tons; 1912, 720,211 tons; 1911, 711,849 tons.

Q. Will you please state the tonnage which moves over the routes of which the Delaware and Hudson Company forms the initial carriers to New England? A. For the

year ending June 30th, 1913, 1,736,157 tons; for the year ending June 30th, 1912, 1,192,150 tons; for the year ending June 30th, 1911, 1,402,827 tons.

Q. Will you now read the tonnage which you learned moved over the routes of which the Philadelphia and Reading formed the originating carrier? A. For the year ending June 30th, 1913, 470,430 tons; for the year ending June 30th, 1912, 298, 216 tons; for the year ending June 30th, 1911, 290,611 tons.

Q. Will you now read what you learned was the tonnage moving over the routes of which the Delaware, Lackawanna and Western was the initial carrier? A. For the year 1913, 23,638 tons; 1912, 15,651 tons; 1911, 371 tons.

Q. That was a very small tonnage, was it not, all of it? A. Correct.

Q. Will you next read in the tonnage that moved over the New York, Ontario and Western, as an initial carrier, and thence into New England? A. 1913, 460,012.08 tons; 1912, 521,317.04 tons; 1911, 539,667.12 tons.

Q. Will you read in the tonnage that moved over the Erie Railroad as an initial carrier, and thence into New England? A. 1913, 315,235 tons; 1912, 363,497 tons; 1911, 409,577 tons.

Q. Will you next read in the tonnage that moved over the Pennsylvania Railroad as an initial carrier, and thence into New England? A. 1913, 183,456 tons; 1912; 113,-868 tons; 1911, 36,109 tons.

Q. Now will you please state the tonnage which moved over the routes of which the Central Railroad of New Jersey forms the initial carrier, to New England? A. 1913, 276,653.05 tons; 1912, 226,349.16 tons; 1911, 168,562.15 tons.

Q. Did the Lehigh and Hudson River Railroad become an avenue of transportation of anthracite coal to New England in any substantial degree prior to September 1st, 1908? A. It did not.

Q. I show you I. C. C. Supplement No. 5 to No. 77 Tariff of the Central Railroad Company of New Jer-

sey. Is that the occasion upon which the routing of coal to New England via the Lehigh and Hudson River Railroad began in any considerable quantity? A. Yes, sir.

Mr. Reynolds offered the said tariff in evidence. Marked "C. R. R. of N. J. Exhibit No. 10, April 7, 1914, C. H. G."

The tariff is as follows:—

"Supplement No. 5 to I. C. C. A. No. 77.

CANCELLATION.

The Central Railroad Company of New Jersey in connection with New York, New Haven & Hartford Railroad (Fx3-No. 65 corr.). Grafton & Upton Railroad Fx3-No. 12. Moshassuck Valley Railroad (Fx3-No. 65 corr.). Narragansett Pier Railroad (Fx3-No. 78). Newport & Wickford Railroad (Fx3-No. 11). Wood River Branch Railroad (Fx3-No. 65 corr.).

Joint Freight Tariff on Anthracite Coal to New York, New Haven and Hartford Railroad. Effective September 1st, 1908.

Rates shown in Tariff I. C. C. A. No. 77, providing for rates on Anthracite Coal via Jersey City to New York, New Haven and Hartford Railroad, Grafton and Upton Railroad, Moshassuck Valley Railroad, Narragansett Pier Railroad, Newport and Wickford Railroad and Wood River Branch Railroad will be withdrawn.

For such rates after September 1st, 1908, see Tariff I. C. C. A. No. 70, applying via Easton, Lehigh and Hudson River Railroad and Maybrook, N. Y.

Issued July 31st, 1908. Effective September 1, 1908.

Issued by T. B. Koons, Freight Traffic Manager, C. R. R. Co. of N. J., New York, N. Y. E. M. Snyder, General Freight Agent, C. R. R. Co. of N. J., New York, N. Y., W. E. Pugh, Division Freight Agent, C. R. R. Co. of N. J., Mauch Chunk, Pa. (400 Copies.)—D. S. W. & Co. File No. 7173.

By MR. REYNOLDS:

Q. What was the occasion of that change of routing? A. It was by reason of the New Haven and Hartford Railroad desiring to close the former gateway by way of Jersey City and float. The matter was finally submitted, by reason of our opposition, to the Interstate Commerce Commission for adjudication, and, after a hearing and investigation of the whole matter, it was concluded to forward certain traffic, including the anthracite coal, to New England via the Lehigh and Hudson and Poughkeepsie Bridge route.

Q. Is the Ontario and Western, Central of New England, New York, New Haven and Hartford route from the coal regions to central and southern New England longer or shorter than the routes via the coal roads to junction points with the Lehigh and Hudson and the Lehigh and New England, thence over the Central of New England and the New York, New Haven and Hartford to central and southern New England? A. The New York, Ontario and Western is the shorter.

Q. Take in comparison with these Lehigh and Hudson River and Lehigh and New England Railroad routes, the route of the Delaware and Hudson, thence via Mechanicville and the Boston and Albany to central New England; which is the shorter? A. Delaware and Hudson by way of Boston and Albany.

Q. Much more direct? A. Yes, sir.

Q. Take the routing via the Erie to Campbell Hall and thence by the Central of New England and across to central and southern New England, and compare that with the route involving the Lehigh and Hudson and the Lehigh and New England; which is shorter? A. The Erie Railroad.

Q. So that, instead of there being one other direct rail route from the coal regions to central and southern New England, there are seventeen, and of the seventeen all those that route initially over the Delaware and Hudson, the Ontario and Western and the Erie are shorter than this other direct rail route that the Government alleges is the only avenue of travel? A. Yes, sir.

Cross examination.

By MR. COUDERT:

Q. In your examination by counsel for the Government, you were asked, were you not, to testify as to the divers routes over which coal went to the various great markets of the United States? A. I was asked to explain certain lines of coal.

Q. You remember that generally, and with the map in front of you, you were asked to explain the routes over which coal went? A. Yes, sir.

Q. And all the routes? A. Yes.

MR. REYNOLDS:—No.

THE WITNESS:—No, not all the routes.

Q. Let us see if you remember. You testified as to the routing of coal, did you not? A. Yes, sir.

Q. Quite fully?

MR. REYNOLDS:—As fully as he was asked. I insist that, if you want to see what he testified to, you put it in from the record.

By MR. COUDERT:

Q. You have testified as to some investigation or proceeding before the Interstate Commerce Commission, as the result of which certain routes were closed up. I forgot what route you called it? A. The Jersey City route and float in connection with the New York, New Haven and Hartford, previous to that change.

Q. What led to that proceeding, if you remember? A. The New Haven and Hartford Railroad people claimed that the tonnage via Jersey City and float and its road was greater than they could care for, and they desired to have a diversion made to the Poughkeepsie Bridge gateway.

MR. DEFOREST:—They cancelled their tariff.

By MR. COUDERT:

Q. What did you do as a result of that cancellation? A. We appealed to the Commission and had the hearing.

Q. And then what happened? A. Then it was determined that, by reason of the Commission's direction, the New Haven and Hartford and the Central Railroad of

New Jersey should endeavor to reach a conclusion and divide the territory, whereby this coal would all move by the Poughkeepsie Bridge gateway, which was done, and that was the result of that cancellation notice of the tariff.

Q. What changes in your routing of coal did you make as a consequence of that cancellation? A. We changed the routing of the anthracite coal in connection with the New Haven and Hartford Railroad from the Jersey City gateway to the Lehigh and Hudson and Maybrook gateway.

Q. How did you ship by way of Maybrook? A. In connection with the Central of New England and New Haven and Hartford Railroad.

Q. What proportion of coal, roughly speaking, did you ship that way, do you remember, as compared with the other new England route? A. There were several hundred thousand tons, I think; something in excess of two hundred thousand.

(Mr. Reynolds directed the attention of counsel for the Government to the previous testimony of the witness, appearing at page 453 and following, of the record.)

By Mr. Coudert:

Q. In your former testimony you were referring to the routes, and all the routes, by which your own coal went to New England, and you did not refer to other routes, by which other coal went to New England; is that what you meant? Is that correct? A. I think, yes, sir; that is correct.

Q. But you testified with as much fullness as possible as to how your coal went to New England, and all the routes? A. Yes, sir; I tried to give the facts.

Q. Every single way by which it went? A. In so far as your questions were asked, as described by the lines on the map, they were followed out; but principally our own coal.

Q. You have stated that you were very familiar with the shipping contracts? A. Yes, sir.

Mr. Reynolds:—Siding and trestle contracts.

Mr. Coudert:—And also shipping contracts?

Mr. Reynolds:—Not shipping contracts.

By MR. COUDERT:

Q. You are very familiar with the routing clauses in coal leases, are you? A. Not coal leases. I am not answering about coal leases.

Q. Then you are not familiar with the fact as to how many leases contain an exclusive shipping clause? You do not know anything about it, do you? A. About shipping clauses?

Q. Yes, in coal leases. A. In connection with coal leases?

Q. Yes. A. No, I do not know anything about that.

Q. You do not know anything about that at all? A. No, sir.

Q. In addition to this form of siding agreement which you use, containing the fifth clause, to which your attention has been directed, there are, are there not, a number of other contracts, siding agreements, containing a clause for exclusive shipment, different from the one to which your counsel has called your attention? Do you know that or not?? A. Not that I know of; as far as siding agreements go other than this form of agreement, I do not know that.

MR. DEFOREST:—In different years there may have been changes in the form.

By MR. COUDERT:-

Q. Are you familiar with leases of coal bins? A. Generally speaking, yes, sir.

Q. I will refer to various ones that are found in the record on page 725 (printed page 353) and the following pages, at Bridgeton, &c., and I will read you a clause from that lease and ask you whether you are not familiar with it: "That all coal shipped to or from said demised premises and handled thereon and thereat shall be shipped over the railroad lines of the party of the first part and their connections." That is in that lease, is it not? A. I think it is; yes, sir.

Q. And you are familiar generally with that, and it is in a number of other leases? A. Yes, sir; but, as I understand, that does not vary hardly with this clause here. (Referring to fifth clause in siding agreement.)

Q. You are not a lawyer, are you, and you are not arguing this case? A. I had that in mind when I said no before.

Q. But, as a matter of fact, the clause that I have read is found in leases of coal bins and so on, of which you know? A. Yes, sir.

Q. Your counsel introduced in evidence an I. C. C. A. No. 3 tariff referring to an adjustment of fifteen cents per ton to equalize similar shipments moving over Port Liberty. How long has that adjustment been in your tariffs? A. From the date of that tariff until about three years ago, I think.

Q. Was it there before the date of that tariff, which is August, 1906? A. I do not think so.

Q. You think it began with that date? A. I think so.

Q. You are pretty sure about that? A. I am not sure.

Q. And it ended how long after? A. How long after that?

Q. Yes; how long did it last continuously? A. Until about three years ago. It was withdrawn, I think, in the latter part of 1911.

Q. That so-called adjustment of fifteen cents was actually made, was it? A. Yes, sir.

Q. In accordance with that tariff? A. Yes, sir.

Q. And it may have been made before, as far as you know? A. I cannot say positively, no, sir.

Q. And was made down to 1909? A. From the date of the tariff; yes, sir, 1906.

Q. Do you know whether, as a matter of fact, the lessees in these various siding agreements which you have mentioned ship their coal over the lines of the Jersey Central? A. Yes, sir.

Q. They live up to the agreement pretty well, do they? A. Yes, sir.

Q. In those various seventeen routes to New England, what is the maximum number of railroads in any one route that you have to go over? A. For instance, to Springfield in connection with the Lehigh Valley Railroad, there would be the Lehigh Valley, West Shore and Boston and Albany Railroad involved.

Q. Three. On any of the routes are there more than three railroads involved in the haul? A. In connection with the Lehigh Valley Railroad, the Southern Division of the Central Vermont Railway, there are the Lehigh Valley, West Shore, Boston and Albany; there are four in that case. There is no line that has more than four, and nearly all of them two and three; most of them two.

Q. Which are the lines which have but two? A. Delaware & Hudson, connecting with the Boston and Maine Railroad at Mechanicsville, direct.

Q. Why is it that none of the Jersey Central coal goes over any of those seventeen lines, except the lines as to which you testified in your first examination? A. It does go over the West Shore Railroad via National Junction, in connection with the Boston and Albany and Boston and Maine, via Albany and Rotterdam Junction.

Q. I understood you to testify, if I remember rightly, that the Jersey Central coal only went over three routes to New England; is that right? A. Yes, that is including the Lehigh and Hudson.

Q. Why did you choose those three routes out of the seventeen? A. Those are the direct and only lines that we work by.

Q. Those are the direct and only lines? A. Yes; that is, the Jersey Central.

Q. You mean the direct and only lines for your coal to go to New England? A. Yes.

Q. And those lines you described fully in your first examination? A. Yes, sir.

Re-direct examination.

By Mr. Reynolds:

Q. The Hepburn law went into effect, did it not, on August 29th, 1906? A. Yes, sir.

Q. And was that the first time that it became necessary to state in tariffs the adjustments for cartage and allowances of that sort? A. Yes, sir.

Q. That was the same date that the tariff you spoke of earlier in your testimony became effective? A. Yes, sir.

Q. Does the Lehigh and Hudson Railroad itself reach the coal regions? A. No, sir.

Q. How near to the coal regions does it go? A. The Lehigh and Hudson Railroad only operates from Maybrook, New York, to Belvidere, New Jersey.

Q. Then it has trackage over the Pennsylvania? A. From thence it has trackage over the Pennsylvania Railroad to Phillipsburg, New Jersey, and from there it has leased rights to reach our tracks at Easton, Pennsylvania, and connect with us at that point.

Q. Taking the coal going to central and southern New England it starts, then, always on some other railroad before it can get on to the Lehigh and Hudson; is that right? A. Yes sir.

Q. And the least number of railroads it could possibly cover before it struck Campbell Hall would be two railroads? A. Yes, sir.

Q. And that does not take into any account whatever the Pennsylvania as a trackage right? A. No, sir.

Q. How many railroads does coal routed over the Erie to Campbell Hall have to go over in order to get to Campbell Hall? A. Over its own line from shipping point to Campbell Hall.

Q. Ontario and Western? A. The same way.

Q. So that, taking either one of these gateways through Campbell Hall to central New England, you always have at least one more road involved in the haul than you would if it started out over the Ontario and Western or the Erie? A. Yes, sir.

Q. Then I undertsand that, in going to points on the Boston and Albany or the Boston and Maine, via Troy or Mechanicsville, the Delaware and Hudson can always route over a two-line route? A. Yes, sir.

Re-cross examination.

By Mr. Coudert:

Q. Then do I understand you that there are seventeen routes which compete for the coal traffic to New England? A. Yes, sir.

Q. As many as that? A. Yes.

By Mr. Kingsbury:

Q. Do I understand you correctly that some of the coal originating on the Jersey Central system goes to New England over the Lehigh and New England? A. Yes, sir.

Q. And some over the Lehigh and Hudson River Railway? A. Yes, sir.

Q. What determines your choice between the two? A. The shippers designating the route. We exercise no voice in the matter.

Q. Is there any advantage of one route over the other? A. No, sir.

Q. Coal can go equally well over either? A. Yes, sir.

Q. Do you know whether the rates are substantially the same? A. The rates are the same.

Q. Exactly the same? A. Yes, sir.

Q. Do you know over which of those two roads the coal of the Lehigh and Wilkes-Barre Coal Company goes? A. It moves by both gateways.

Q. Moves by both of them? A. Yes, sir.

Q. Do you know in what proportions? A. The proportion I cannot determine definitely. There is a considerable portion moving via the Lehigh and New England and the balance is moving via the Lehigh and Hudson.

Q. You think it is distributed about equally between the two? A. No, I would not say that.

Q. Which has the more? A. The Lehigh and Hudson has the greater share.

Q. Do you know of any reason for that? A. Any more than the shippers designating the route.

Q. You do not know why the Lehigh and Wilkes-Barre Coal Company selects that route? A. I judge due to the fact that the consignees, people in New England, may request that movement. I cannot say definitely why.

Q. Do both the Lehigh and New England and the Lehigh and Hudson make connections which reach the same points in New England? A. Yes, sir.

Q. And yet the consignees may express a preference for one route or the other? A. Yes, sir.

Q. Do you know any reason why they should? A. No more than if I were a solicitor, I might solicit the business by a particular route, and have the consignee designate that route, if I was interested in it, and the shippers apparently recognize the requests and wishes of the consignees.

Q. Do you personally consider the Lehigh and New England and the Lehigh and Hudson as competing for coal traffic? A. Yes, sir.

(Adjourned until Friday, April 10th, 1914, at 11 A. M., to meet at Reading Terminal, Philadelphia, Pa.)

Meeting set for Friday, April 10th, 1914, postponed by agreement of counsel.

PHILADELPHIA, PA., Tuesday, April 14th, 1914.
11 o'clock A. M.

Present.—The Examiner. Messrs. Coudert, Kingsbury and Gordon, Special Assistants to the United States Attorney General, for the Government. Messrs. Reynolds, Heebner and Drinker for the defendants.

H. C. ZACHARIAS, recalled:—

By MR. REYNOLDS:

Q. At my request have you supervised the reduction to a smaller scale of the composite map introduced as respondent's Exhibit 1, sections 1, 2, 3 and 4? A. Yes, sir.

Q. Is this map I show you the result of that reduction of the composite? (Map shown witness.) A. It is.

Q. That is done by a mechanical process which simply reduces the map in the same proportion to a smaller scale? A. Yes, sir.

Q. Have you checked the reproduced map against the original larger maps to determine whether the smaller map is an exact reproduction of the larger composite on the smaller scale? A. Yes, sir.

Q. And is it an accurate reproduction? A. It is.

(Reproduction of map offered in evidence and marked "Respondent's Exhibit No. 11.")

MR. COUDERT:—We have no present objection. If any inaccuracy appears we will call it to the attention of the Government.

Cross examination.

By MR. COUDERT:

Q. Do you know whether the location of the collieries on the maps are accurate as to proportion and distances and so on from the railroads? A. As to this territory of the Reading Company and of the Lehigh and New England.

Q. Those you know about? A. Yes, sir; those I know about. The others, I know some but not all, but in tracing these on there we got the gentleman who testified before, Mr. Van Ness, and another gentleman, who did know it and who put it in in accordance with their understanding.

Q. As far as you know, all the collieries are there set down in their respective proper positions? A. Yes, sir; those that I know of, every one of them are there in their proper place.

MR. REYNOLDS:—I desire to have considered in evidence, although I shall not encumber the record with all the verbosity of the various statutes, the following statutes in Pennsylvania, tracing the corporate organization of the Lehigh and Wilkes-Barre Coal Company, of which I will hand copies in full to counsel for the other side.

I first offer copy of sections 13, 14 and 15 of "An Act authorizing the merger and consolidation of oil or other mining companies," approved April 18th, 1867, which may be found in 3 Purdon's Digest, 13th edition on page 2611 and there set out as sections 13, 14 and 15 of the mining companies act which reads as follows:—

(It is understood that counsel for either party may refer to any part of the statute in brief or in argument.)

"13. The provisions of the Act, entitled 'An Act relating to railroad companies,' passed May 16th, Anno Domini 1861, and the supplement thereto, entitled 'A further sup-

plement to an act, entitled "An act relating to railroad companies," passed May 16th, Anno Domini, 1861,' which supplement was approved the 23d day of March, Anno Domini 1865, be and the same are hereby extended to oil and other mining companies.

"14. Any two or more oil or other mining companies which shall, according to the provisions of said recited acts, agree to merge or consolidate their rights and privileges granted to them under the laws of this commonwealth are hereby authorized to assume such name as the board of directors selected by the joint action of said companies may designate, and also to fix the amount of the capital stock of said company after the consolidation, and designate the time and places of meeting of the board of directors: *Provided,* That immediately after said consolidation shall have been effected, it shall be the duty of said company to certify to the secretary of the commonwealth the name of said company and the amount of its capital stock.

"15. It shall be lawful for the president and directors, or a majority thereof, of any oil or other mining company, agreeing or desirous of accepting the provisions of this act, to make such merger and consolidate in manner and form as hereinbefore provided."

I also offer from the Pamphlet Laws of Pennsylvania of the Session of 1868, page 940, an Act authorizing the merger and consolidation of coal companies, coal and iron companies and other mining companies, and of companies having mining privileges in the counties of Schuylkill and Luzerne, as follows:—

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That it shall be lawful for coal companies, coal and iron companies and other mining companies and for companies having mining privileges whether chartered under any general or special law of this commonwealth, to merge and consolidate their corporate rights, powers, privileges, property and franchises into any other company owning real estate in the same county, being a coal

or mining company, or a coal and iron company, or a company having mining privileges.

"SECTION 2. That such merger and consolidation shall be made in accordance with the conditions and restrictions prescribed for the consolidation and merger of railroad companies, by an act relating to railroad companies, which became a law on the sixteenth day of May, Anno Domini one thousand eight hundred and sixty-one; and when so made, all the property, rights, franchises and privileges of the company so merged shall, by virtue of such merger, be thereby transferred to and vested in the company into which such merger shall be made; and all the other provisions of the said act of May sixteenth, Anno Domini one thousand eight hundred and sixty-one, and of the supplements thereto, except that which limits the right of consolidation and merger to connecting railroads, which are not inconsistent with this act, are hereby extended and made applicable to the companies mentioned in the first section of this act: *Provided*, That this act shall apply only to companies whose coal lands and mining property are located in the counties of Schuylkill and Luzerne.

ELISHA W. DAVIS,
Speaker of the House of Representatives.
JAMES L. GRAHAM,
Speaker of the Senate.

Approved: The thirteenth day of April, Anno Domini one thousand eight hundred and sixty-eight.

JNO. W. GEARY."

I also offer in evidence abstracts from an act entitled "An act relating to railroad companies," passed May 16th, 1861, and the supplement thereto, approved March 23d, 1865, which may be found in 4 Purdon's Digest, 13th edition, pages 3884, 3885, 3886 and 3887, and set out as sections numbered 156 to 161.

Section 157 provides for the conditions and restrictions under which the merger shall be made.

158. Upon the filing of the said certificate and copy of agreement, in the office of the Secretary of the Commonwealth, the said merger shall be deemed to have taken place, and the said companies to be one corporation, possessing all the rights, privileges and franchises theretofore vested in either of them; and all the property, real, personal and mixed, and debts due and rights of action, shall be deemed and taken to be transferred to, and vested in the company into which such merger may have been made, without further act or deed; and all property, all rights of way and all other interests, shall be as effectually the property of such company or corporation into which such merger may have been made, as they were of either of the former corporations, parties to said agreement: * * *

And provided further, That a certified copy of the said certificate and copy of agreement, so to be filed in the office of the Secretary of the Commonwealth, shall be evidence of the lawful holding and action of such meetings, and of the consolidation of said companies, and of the said merger."

I next offer in evidence an Act to incorporate the Broad Top Mining Company, approved the second day of June, A. D. one thousand eight and seventy-one, supplement to the act to incorporate the Broad Top Mining Company, approved April 3d, one thousand eight hundred and seventy-two, an act to incorporate the Lackawanna Iron and Coal Company, approved April 5th, 1853, an act to incorporate the Honey Brook Coal Company, approved the 23d day of April, A. D. one thousand eight hundred and sixty-four. I also introduce, without printing at length, with the same understanding as to the right to refer to both sides, joint agreement of December 10th, 1872, between the Broad Top Mining Company and the Honey Brook Coal Company, a certificate of the meeting of the stockholders of the Honey Brook Coal Company dated December 28th, 1872, a certificate of the meeting of stockholders of the Broad Top Mining Company of December 31st, 1872. Also the act to incorporate the Consolidated Coal Company, approved the first day of April, one thousand eight hundred and fifty-six, and supplement to an act to incorporate the Consolidated

Coal Company, approved the first day of April, A. D. one thousand eight hundred and sixty-four, an act to incorporate the Wilkes-Barre Coal and Iron Company, approved June 8th, one thousand eight hundred and sixty-four, an act to consolidate the Wilkes-Barre Coal and Iron Company and the Consolidated Coal Company, approved March 9th, A. D. one thousand eight hundred and sixty-five, and supplement to an act entitled an act to incorporate the Wilkes-Barre Coal and Iron Company, approved February 11th, A. D. one thousand eight hundred and sixty-eight, also a copy of the joint agreement made the twentieth day of January, 1874, between the directors of the Honey Brook Coal Company and the directors of the Wilkes-Barre Coal and Iron Company, by which the companies were merged. Also copy in full of the certificate of the Secretary of the Commonwealth of Pennsylvania of February 6th, 1874, certifying the merger and consolidation of the companies, as follows:

(It is understood that all of these acts are the acts of the Legislature of the Commonwealth of Pennsylvania.)

"OFFICE OF THE SECRETARY OF THE COMMONWEALTH,

"HARRISBURG, PA., Feb. 6th, 1874.

"I hereby certify, That the foregoing is a true and correct copy of the joint agreement for the consolidation made and concluded on the twentieth day of January, A. D. 1874, by and between the Directors of the Wilkes-Barre Coal and Iron Company and the Directors of the Honey Brook Coal Company under the corporate seal of each company, for the consolidation and merger of the said The Wilkes-Barre Coal and Iron Company into and with the said Honey Brook Coal Company under the name of the Lehigh and Wilkes-Barre Coal Company, and adopted at a meeting of the stockholders of each of said companies held at the office of the Honey Brook Coal Company, in the city of Philadelphia, on the 5th day of February, A. D. 1874, and of the certificates of the Secretaries of the respective companies under the corporate seals thereof, as the same remains on file in this office, and that a copy of said agreement, duly certified by

the signatures of the Secretary and corporate seal of each company, together with a certificate by the Secretary of each company, under the corporate seal thereof, of the fact that at a meeting of the stockholders of The Wilkes-Barre Coal and Iron Company, and of the Honey Brook Coal Company, called separately, for the purpose of taking said agreement into consideration, after due notice as required by law, the said agreement had been considered and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and that more than two-thirds of all the votes of all the stockholders of each company had been for the adoption of said agreement, was duly filed in the office of the Secretary of the Commonwealth on the sixth day of February, A. D. 1874, and that the same is from thence to be deemed and taken as the agreement and act of consolidation of the said companies.

"*In Testimony Whereof*, and to certify the foregoing copy of said agreement and Act of consolidation I have hereunto set my hand and affixed the Seal of the Commonwealth of Pennsylvania, at Harrisburg, on this sixth day of February, in the year of our Lord one thousand eight hundred and seventy-four. (1874)

M. S. QUAY,
Secretary of the Commonwealth.

(Seal of Secretary's Office, Penna.)"

W. C. JOHNSON having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your office, and with what company? A. Comptroller of the Lehigh and Wilkes-Barre Coal Company.

Q. Have you any official relations whatever with the Philadelphia and Reading Coal and Iron Company? A. No, sir; not at all.

Q. With the Lehigh Coal and Navigation Company? A. No, sir.

Q. Or any railroad? A. No, sir.

Q. Are you familiar with that paper? (Paper shown witness.) A. Yes, sir. It is a list of stockholders holding shares over 50.

Q. Will you please file that statement with the Examiner?

The witness produced the following statement:

STATEMENT OF THE FIFTY LARGEST STOCKHOLDERS OF THE LEHIGH AND WILKES-BARRE COAL COMPANY

(Other than the C. R. R. of N. J.)

NAME.	ADDRESS.	SHARES.
Hencken, Hancke	8 West 121 St., N. Y. City	1,611
Lounsbery, Edith H	31 Nassau St., N. Y. City	1,000
Whitehouse & Co	111 Broadway, N. Y. City	1,000
McCreary, Geo. D	Market St. Nat. Bank, Phila., Pa	971
Kemmerer, M. S., Guardian John L. & Gertrude L. Kemmerer	Mauch Chunk, Pa	933
Wentz, Mary D	1727 Land Title Bldg., Phila., Pa	873
Paine, Alice McCreary	1115 St. Paul St., Baltimore, Md	646
Bullitt, Est. of John C	750 Bullitt Building, Phila., Pa	500
Lehigh Coal & Navigation Company	437 Chestnut St., Phila., Pa	500
Girard Trust Co. and Delos O. Wickham, Guardians Est. of Mary W. Leisenring	Broad & Chestnut Sts., Phila., Pa	417
Girard Trust Co. and Delos O. Wickham, Guardians Est. of Edward B. Leisenring	Broad & Chestnut Sts., Phila., Pa	417
McCreary, George D. & Fidelity Trust Co., Trustees u/w Rachel D. McCreary, dec'd	Market St. Nat. Bank, Phila., Pa	323
Hotchkiss, Susan V	P. O. Box No. 275, New Haven, Conn	320
Townsend, Mary H	New Haven, Conn	320
Dodd, Allison	307 Relleville Ave., Bloomfield, N. J	300
Bull, Est. of Alice B	c/o R. Maclay Bull, 441 Park Ave., N. Y. City	220
Potts, William B	111 Broadway, N. Y. City	220
Cox, John L., Trustee	2119 Locust St., Phila., Pa	200
Dow, R. K	Claremont, N. H	200
Jarvie, James N	66 Broadway, N. Y. City	200
Potts, Frederic A	143 Liberty St., N. Y. City	200
Tower, Est. of C	228 South 7th St., Phila., Pa	200
Vail, Frances H	c/o Thos. Vail, Troy, N. Y	162
Butler, Chas. E	819 W. Diamond St., Hazleton, Pa	100
Dickson, Samuel	750 Bullitt Building, Phila., Pa	100
Lloyd, Est. of Aaron	Nutley, N. J	100
Mill Creek Coal Co	1 Broadway, N. Y. City	100

Morton, Warner G.	130 State St., Albany, N. Y.	100
New York Life Ins. & Trust Co. Trustee u/w Charlotte M. Goodridge	P. O. Box No. 501, N. Y. City	100
Potts, Wm. R.	143 Liberty St., N. Y. City	100
Price, Harrie B.	3937 Chestnut St., Phila., Pa.	85
Price, Est. of Sam'l. B.	Hazleton, Pa.	84
Price, John B.	Hazleton, Pa.	84
Hotchkiss, Henry L.	P. O. Box No. 275, New Haven, Conn.	80
Kemmerer, M. S.	Mauch Chunk, Pa.	70
Leisenring, Est. of Mary A.	Sandy Run, Pa.	70
Carter, Hattie D.	Mauch Chunk, Pa.	67
Heaton, Robert D.	Ashland, Pa.	67
Lentz, Est. of Stella P.	1304 Penn. Building, Phila., Pa.	67
Middleton, Elilie P.	Torresdale, Pa.	66
Reeves, Mary W.	4946 Locust St., Phila., Pa.	60
Cushman, Alice	919 Pine St., Phila., Pa.	50
Fearon, Charles	333 Chestnut St., Phila., Pa.	50
Griswold, Frank T.	1600 Spruce St., Phila., Pa.	50
Kean, Sr., Est. of John	Elizabeth, N. J.	50
Kean, Jr., John	Elizabeth, N. J.	50
Vanatta, Jacob	(Unknown)	50
Peter, Albert	Park & Chelten Aves., Logan, Phila., Pa	50
Loose, Mary E.	Clear Spring, Md.	38
Fearon & Co., Charles	333 Chestnut St., Phila., Pa.	35
		13,656

Q. Did you at my request scrutinize the figures for some years past to determine in a general way the territory over which the coal of the Lehigh and Wilkes-Barre Coal Company was sold? A. Yes, sir.

Q. Is it a correct deduction from the statistics you have prepared that there is a very large tonnage of that coal sold in Pennsylvania? A. Yes, sir.

Q. And New York? A. Yes, sir.

Q. And New Jersey? A. Yes, sir.

Q. And Connecticut? A. Yes, sir.

Q. And Massachusetts? A. Yes, sir.

Q. New Hampshire? A. Yes, sir.

Q. Rhode Island. A. Yes, sir.

Q. Vermont? A. Yes, sir.

Q. Maine? A. Yes, sir.

Q. And a somewhat less tonnage in some of the southern States, like South Carolina? A. Very little.

Q. And Canada? A. Yes, sir.

Q. And some railroad supply coal? A. Yes, sir.

Q. Supplementing that investigation, did you, at my request, collaborate with the corresponding officer of the

Philadelphia and Reading Coal and Iron Company in the preparation of an exhibit showing the extent to which the two companies marketed coal at common markets? A. Yes, sir.

Q. Is this paper I show you the result of that work? A. Yes, sir.

Q. Was the column showing the tonnage going to the points named in the first column under the head of the Lehigh and Wilkes-Barre Coal Company shipments, prepared under your direction? A. Yes, sir.

Q. Is it correct? A. It is correct; yes, sir.

(Statement produced by the witness marked for identification Defendant's Exhibit, No. 12.)

Q. Did you at my request also prepare a compilation from the publications of the Pennsylvania State Department of Mines showing the total annual production of anthracite coal in Pennsylvania shipped to market between 1890 and 1911, inclusive? A. Yes, sir.

Q. At my further request, was that set of statistics grouped so as to bring under the production of the larger operators, like the Philadelphia and Reading Coal and Iron Company, the Lehigh and Wilkes-Barre Coal Company and other of the larger producers, tonnage which at any time during that period was purchased by them from outside operators? A. Yes, sir.

Q. The compilation shows not only the production mined and shipped by the large company, but separately in that group the individual production of the smaller company which may have sold some time during the period its coal to the large producer? A. Yes, sir.

Q. And then they are brought down to a total of the production of the large company, and that bought by it from smaller companies? A. Yes, sir.

Q. The report for the year 1911 is the last published report of the department of mines in Pennsylvania, is it not? A. Yes, sir. The later report is not out yet.

Q. Is the statement I show you the one that you compiled? A. Yes, sir.

(Witness produced statement marked "Defendant's Exhibit No. 13," which is attached hereto.)

STATEMENT OF THE TOTAL ANNUAL PRODUCTION OF ANTHRACITE COAL IN PENNSYLVANIA SHIPPED TO MARKET, SH
ALSO PRODUCTION OF OTHER INDEPENDENT OPERATORS W

(Compiled from Annual Publications of Pennsylvania Department of Mines.)

Operator.	1890	1891	1892	1893	1894	1895	1896	1897	1898
Philadelphia & Reading Coal & Iron Co.	6,762,902	7,630,463	7,093,011	7,335,116	7,130,136	8,366,153	7,119,628	6,296,347	6,258,318
Excelsior Coal Co.	213,782	241,763	238,076	250,205	230,644	239,646	211,930	202,810	172,045
Enterprise Coal Co.	105,120	71,599	101,870	108,971	96,896	.....	160,678	156,650	111,528
Pine Hill Coal Co.	.....	.....	.....	.....	.....	.....	44,112	111,127	130,565
St. Clair Coal Co.	49,447	86,662	.....	.....	107,954	181,272	148,498	.....	158,017
Leisenring & Co.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Buck Run Coal Co.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total.	7,131,251	8,030,487	7,432,957	7,694,292	7,565,630	8,787,071	7,684,846	6,766,934	6,830,473
Lehigh & Wilkes-Barre Coal Co.	2,157,788	2,526,633	2,572,973	2,796,394	2,308,358	2,595,641	2,209,307	2,037,635	1,882,684
Parrish Coal Co.	295,747	297,969	189,422	120,882	104,887	240,542	266,872	264,727	346,127
Red Ash Coal Co.	277,550	293,365	265,563	290,049	209,732	208,273	248,499	196,746	162,426
West End Coal Co.	.....	.....	.....	.....	.....	.....	26,208	.....	56,823
Total.	2,731,085	3,117,967	3,027,958	3,207,325	2,622,977	3,044,456	2,750,886	2,499,108	2,448,060
Lehigh Valley Coal Co.	1,196,863	1,379,814	1,480,291	1,686,580	1,906,730	2,631,558	2,752,555	2,621,850	2,565,880
Coxe Bros. & Co.	1,274,118	1,275,328	1,218,012	1,278,005	1,145,368	1,297,498	1,177,450	1,165,990	1,102,654
Markle & Co., G. B.	458,224	420,493	343,632	400,571	477,915	600,132	647,884	655,057	752,129
Lentz, Lilly & Co.	238,979	304,287	335,545	347,591	204,442	390,813	219,609	217,864	237,401
Midvalley Coal Co.	.....	92,214	184,183	82,749	149,918	.....	181,557	.....	191,281
Mill Creek Coal Co.	144,603	144,142	150,723	177,114	264,447	210,872	304,091	268,545	278,220
Alden Coal Co.	267,538	248,846	236,478	194,012	183,731	194,620	216,088	218,133	171,345
Annora Coal Co.	165,735	155,687	107,744	81,862	29,171	.....	.....	.....	.....
Babylon Coal Co.	76,128	158,777	208,804	220,267	229,386	220,398	180,106	122,490	101,657
Butler Mine Co.	161,981	172,638	175,144	169,460	259,868	204,942	218,521	204,885	189,732
Mt. Lookout Coal Co.	.....	27,079	193,399	257,223	294,437	314,287	101,386	284,957	294,238
Old Forge & Seneca Coal Co.	147,312	143,944	161,520	189,623	201,239	216,918	199,558	253,438	190,678
Silver Brook Coal Co.	162,943	135,892	155,991	258,730	222,136	233,715	236,644	232,703	239,096
Total.	4,294,424	4,659,141	4,951,466	5,343,787	5,568,788	6,515,753	6,435,449	6,245,912	6,314,311
Delaware, Lackawanna & Western R. R. Co.	2,765,937	3,068,020	3,351,258	3,502,500	3,193,854	3,692,868	3,811,329	3,759,974	3,829,112
Peoples Coal Co.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Plymouth Coal Co.	151,036	168,741	184,032	173,676	170,661	155,717	143,986	165,471	208,364
Clear Spring Coal Co.	157,273	160,137	175,510	174,212	182,491	183,873	173,643	157,064	156,189
Elliott & McClure Coal Co.	92,462	119,163	128,323	118,809	92,856	95,559	77,325	85,855	103,459
Total.	3,166,708	3,516,061	3,839,123	3,969,197	3,639,862	4,128,017	4,206,283	4,168,364	4,297,124
Pennsylvania Coal Co.	1,397,286	1,729,757	2,014,658	2,125,043	2,043,987	1,971,036	1,950,182	1,937,647	1,837,567
Dolph Coal Co.	85,810	67,040	55,384	101,388	52,954	107,114	117,954	124,144	156,373
Green Ridge Coal Co.	.....	.....	.....	.....	.....	.....	.....	.....	98,425
Jermyn & Co.	.....	326,613	.....	373,883	314,131	364,296	293,364	246,654	283,698
Jermyn, J. & J.	402,064	277,080	589,151	226,806	175,577	132,257	.....	.....	.....
Lackawanna Iron & Coal Co.	562,865	451,041	491,938	450,325	412,790	410,986	385,527	380,490	354,990
Lackawanna Coal Co.	238,514	.....	337,765	329,344	276,088	284,135	252,012	196,401	184,799
Oak Hill Coal Co.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hillside Coal Co.	888,797	1,029,657	1,072,615	978,938	868,972	878,530	835,045	747,078	629,889
Total.	3,575,336	3,881,188	4,561,511	4,585,727	4,144,499	4,148,354	3,834,084	3,632,414	3,545,741
Delaware & Hudson Co.	3,490,993	3,750,013	4,174,718	4,265,680	3,905,453	4,220,763	4,100,122	3,922,321	3,829,991
Hudson Coal Co.	.....	.....	.....	54,090	87,674	141,646	.....	.....	.....
Total.	3,490,993	3,750,013	4,174,718	4,319,770	3,993,127	4,362,409	4,100,122	3,922,321	3,829,991
Lehigh Coal & Navigation Co.	1,254,779	1,255,867	1,274,210	1,497,936	1,288,699	1,320,888	1,293,041	1,398,536	1,285,114
Kingston Coal Company.	777,344	736,701	750,430	984,753	668,528	703,728	697,292	701,043	751,574
Temple Iron Company.	.....	.....	.....	.....	.....	.....	.....	.....	.....

"A" Sell their own coal from August 1st, 1909.

EFENDANT'S EXHIBIT No. 13.

HOWING IN GROUPS THE PRODUCTION OF THE LARGE INTERESTS (INCLUDING INDEPENDENT OPERATORS FROM WHOM THEY USUALLY PURCHASE), AND WHO USUALLY SELL THEIR OWN PRODUCT, FROM JANUARY, 1890, TO DECEMBER 31ST, 1911, INCLUSIVE.

1899	1900	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	Operator.
7,605,791	7,093,700	8,257,112	4,430,941	8,770,637	8,750,023	10,002,456	8,891,933	10,675,964	9,115,652	8,526,398	8,433,348	9,425,094	Philadelphia & Reading Coal & Iron Co.
202,390	129,972	154,615	99,802	219,081	225,758	207,102	201,547	199,613	213,853	224,125	237,030 B	250,351	Excelsior Coal Co.
126,263	145,654	203,210	131,887	241,191	165,872	52,469	90,815	201,912	170,674	81,888	174,824	205,860	Enterprise Coal Co.
.....	31,093	52,892	36,948	112,867	116,947	79,736	8,055	80,515	75,187	68,804	92,362	101,542	Pine Hill Coal Co.
129,188	157,947	289,198	175,412	336,374	311,624	388,874	352,108	453,028	346,261	291,478	305,286 B	201,211	St. Clair Coal Co.
195,412	182,901	200,836	76,258	139,250	.....	.....	.....	.....	.....	.....	.....	.....	Leisenring & Co.
.....	.....	.....	35,422	176,802	175,735	244,085	190,893	165,192	145,641 A	70,530	.....	.....	Buck Run Coal Co.
8,259,044	7,741,267	9,157,863	4,986,670	9,996,202	9,745,959	10,974,722	9,735,351	11,776,224	10,067,268	9,263,723	9,242,850	10,184,058	Total.
2,592,715	2,706,061	3,292,502	1,785,118	3,646,675	3,409,970	3,712,144	3,344,490	3,921,506	4,170,320	3,736,797	3,916,116	4,359,544	Lehigh & Wilkes-Barre Coal Co.
528,307	461,776	613,257	324,040	729,394	623,162	654,564	463,499	501,561	421,869	331,399	360,858 B	259,832	Parrish Coal Co.
202,836	163,073	238,465	119,914	141,300	201,309	219,790	157,453	211,636	173,262	206,996	197,007 B	200,455	Red Ash Coal Co.
102,867	57,885	73,290	78,665	204,423	134,921	200,719	191,657	225,779	265,470	194,963	198,143 B	235,820	West End Coal Co.
3,426,725	3,388,795	4,217,514	2,307,737	4,721,792	4,369,362	4,787,217	4,157,099	4,860,482	5,030,921	4,470,155	4,672,124	5,055,651	Total.
2,922,709	3,532,474	3,523,270	2,151,950	5,206,278	4,928,454	5,911,432	4,692,457	5,819,983	5,029,207	4,769,114	5,683,754	6,784,453	Lehigh Valley Coal Co.
1,164,568	1,032,602	1,173,623	454,885	1,093,488	1,022,195	1,089,092	1,027,158	1,157,486	1,042,694	784,878	1,000,883	1,239,235	Coxe Bros. & Co.
1,005,966	934,386	952,306	405,040	960,608	939,468	937,622	739,835	850,198	897,687	1,004,034	977,329	1,107,177	Markle & Co., G. B.
262,208	281,102	337,497	165,682	357,308	353,067	374,081	333,776	331,422	255,835	235,582	376,969	.....	Lentz, Lilly & Co.
358,557	354,682	433,869	232,992	444,918	458,517	404,016	350,120	376,570	304,853	281,627	313,001	337,867	Midvalley Coal Co.
315,763	319,577	402,012	248,112	435,213	425,636	464,626	382,173	487,511	593,155	516,097	112,384	119,833	Mill Creek Coal Co.
222,986	181,951	235,298	131,924	270,334	270,485	250,263	240,077	265,868	298,399	248,555	263,501	266,103	Alden Coal Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Annora Coal Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Babylon Coal Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Butler Mine Co.
201,600	116,476	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	304,824	Mt. Lookout Coal Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Old Forge & Seneca Coal Co.
141,271	194,149	312,998	178,841	97,742	104,509	.....	.....	.....	.....	.....	.....	.....	Silver Brook Coal Co.
188,490	136,867	153,852	57,382	119,848	63,584	54,610	5,096	.....	.....	.....	.....	.....	
6,784,118	7,084,266	7,524,725	4,026,808	8,985,737	8,565,915	9,485,742	7,770,692	9,289,038	8,421,830	7,839,887	8,727,821	10,159,492	Total.
4,501,997	4,502,792	5,805,461	4,109,678	7,285,422	7,370,663	7,544,602	7,602,413	8,731,599	8,183,844	7,564,477	7,944,716	8,322,675	Delaware, Lackawanna & Western R. R. Co.
.....	2,910	115,143	107,403	241,560	259,353	197,086	132,965	109,993	93,165	69,781	32,279	42,055	Peoples Coal Co.
113,419	7,744	117,108	93,129	204,049	158,298	167,186	136,860	149,124	160,400	289,875	266,812	273,333	Plymouth Coal Co.
189,573	183,610	230,874	123,495	210,690	200,162	308,238	201,486	247,344	208,169	55,720	100,349	35,753	Clear Spring Coal Co.
105,943	127,968	194,364	78,633	174,718	162,601	136,004	72,694	103,115	249,382	267,573	221,988	236,735	Elliott & McClure Coal Co.
4,910,932	4,825,024	6,462,950	4,512,338	8,116,439	8,151,077	8,353,116	8,146,418	9,341,175	8,894,960	8,247,426	8,566,144	8,910,551	Total.
2,369,490	2,140,799	2,318,618	1,739,968	3,082,128	2,958,353	3,255,120	3,095,497	3,971,390	4,332,097	4,470,214	4,570,332	5,020,606	Pennsylvania Coal Co.
166,584	135,595	182,885	103,306	189,574	255,120	221,042	264,772	248,024	183,913	146,566	143,994	140,892	Dolph Coal Co.
.....	107,288	132,801	15,544	120,670	95,410	114,048	93,094	95,481	86,125	78,531	79,589	65,078	Green Ridge Coal Co.
.....	.....	.....	265,980	445,496	310,247	396,828	143,598	331,712	528,587	712,548	590,335	576,948	Jermyn & Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Jermyn, J. & J.
340,152	153,483	421,534	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Lackawanna Iron & Coal Co.
54,886	.....	.....	.....	.....	.....	.....	190,535	270,248	346,781	.....	438,669	433,452	Lackawanna Coal Co.
.....	.....	.....	.....	.....	.....	.....	83,472	193,836	225,118	208,354	219,893	290,508	Oak Hill Coal Co.
.....	.....	.....	.....	.....	99,640	152,436	1,285,322	1,414,392	1,218,555	1,193,299	1,265,175	1,638,266	Hillside Coal Co.
872,547	700,320	1,287,265	1,062,679	1,570,751	1,274,243	1,439,885							
3,803,659	3,237,485	4,343,103	3,187,477	5,408,619	4,993,013	5,579,359	5,156,290	6,525,083	6,921,176	6,809,512	7,307,987	8,165,750	Total.
4,083,148	3,914,917	4,823,163	2,809,639	5,629,203	4,869,002	5,291,510	4,863,198	5,951,179	5,838,294	4,955,394	5,192,781	5,329,387	Delaware & Hudson Co.
.....	.....	181,033	223,833	198,209	325,437	281,603	406,452	537,423	614,620	1,110,863	1,345,812	1,872,994	Hudson Coal Co.
4,083,148	3,914,917	5,004,196	3,033,472	5,827,412	5,194,439	5,573,113	5,269,650	6,488,602	6,452,914	6,066,257	6,538,593	7,202,381	Total.
1,541,249	979,899	1,592,740	867,169	1,819,828	1,859,716	2,197,903	2,186,968	2,811,502	2,658,273	2,590,799	3,279,011	3,478,447	Lehigh Coal & Navigation Co.
894,143	830,677	916,657	569,435	993,799	1,057,047	1,098,984	1,116,482	1,433,096	1,780,568	1,818,449	1,981,816	1,956,188	Kingston Coal Company.
1,419,643	1,178,820	1,365,336	734,042	1,029,087	1,044,200	1,086,578	613,427	985,864	748,568	1,549,304	778,323	.....	Temple Iron Company.

STATEMENT OF THE TOTAL ANNUAL PRODUCTION OF ANTHRACITE COAL IN PENNSYLVANIA SHIPPED TO MARKET, SHOWING IN
ALSO PRODUCTION OF OTHER INDEPENDENT OPERATORS WHO USUALLY

(*Compiled from Annual Publications of Pennsylvenia Department of Mines.*)

OPERATOR.	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	
SCRANTON COAL COMPANY	165,431	57,537	169,480	200,163	33,719	165,701	178,062	185,936	158,014	931,306	
Price Pancoast Coal Co	131,842	172,231	167,467	198,934	202,249	221,488	196,261	189,570	204,228	225,066	
Mt. Jessup & Moosic Mountain Coal Co	.....	.....	.....	.....	.....	.....	179,718	176,788	.....	.....	
Moosic Mountain Coal Co	59,697	55,749	58,510	50,566	77,185	111,388	.....	.....	94,983	193,961	
Mt. Jessup Coal Co., Limited	23,048	62,562	94,109	91,840	95,734	105,891	.....	.....	81,324	.....	
Total	380,018	348,079	489,566	541,503	408,887	604,468	554,041	552,294	538,549	1,350,333	
SUSQUEHANNA COAL COMPANY	1,412,244	1,449,024	1,383,816	1,431,326	1,344,192	1,247,947	1,167,887	1,133,587	1,022,181	794,776	
Mineral R. R. & Mining Co	318,049	501,941	528,185	518,602	372,363	383,610	233,826	320,050	369,382	511,937	
Lykens Valley Coal Co	265,803	.....	282,648	.....	256,307	221,600	257,448	250,428	271,713	.....	
Summitt Branch Mining Co	297,271	609,514	340,947	624,103	298,408	347,587	290,163	248,234	258,804	582,378	
Lytle Coal Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Total	2,293,367	2,560,479	2,535,596	2,574,031	2,271,270	2,200,744	1,949,324	1,952,299	1,922,080	1,889,091	
INDIVIDUAL OPERATORS MINING 500,000 to 1,000,000 tons:—											
Elk Hill Coal & Iron Co	.....	37,215	83,191	114,156	209,053	224,868	155,982	138,230	123,999	75,527	
Forty Fort Coal Co	.....	.....	.....	.....	150,930	294,246	306,071	238,659	265,721	.....	
Simpson & Watkins	.....	480,689	.....	.....	.....	243,216	.....	.....	.....	.....	
Sterrick Coal Co	.....	.....	.....	81,486	134,733	147,963	154,793	133,234	121,708	.....	
Union Coal Co	355,033	457,139	533,611	455,436	603,823	837,027	709,610	699,746	728,214	731,880	
Van Wickle & Co., A. S	.....	208,968	309,836	357,189	493,219	653,695	543,827	517,421	536,562	527,694	
Pardee Bros. & Co	164,067	215,493	316,035	303,027	278,194	345,440	.....	.....	.....	.....	
Pardee & Co., A	509,780	573,982	496,703	475,822	385,670	274,470	124,050	213,726	262,950	270,143	
Pardee & Co., Calvin	107,494	131,511	120,218	111,089	100,159	90,290	564,945	502,015	487,637	545,628	
Pardee Sons & Co	46,049	61,445	150,254	184,728	167,496	192,797	.....	.....	.....	.....	
North American Coal Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	299,026	
Total	1,182,423	2,166,442	2,009,848	2,082,933	2,523,277	3,304,012	2,559,278	2,443,031	2,526,791	2,449,898	
300,000 to 500,000 tons:—											
Connell Coal Co	48,602	.....	.....	224,980	295,436	328,309	378,581	295,538	256,054	242,248	
Connell & Co., Wm	350,395	492,071	467,506	245,835	169,428	142,895	119,149	107,610	102,906	111,865	
Dodson Coal Co	178,153	181,719	221,192	221,960	146,830	246,071	332,165	379,983	288,196	244,768	
Dodson & Co., C. M	184,208	191,492	194,917	188,494	182,319	169,726	166,427	160,975	145,753	152,491	
Dodson & Co., T. M	.....	.....	.....	.....	.....	.....	.....	.....	.....	74,939	
Forest Mining Co	.....	.....	.....	.....	.....	.....	100,923	202,183	225,019	314,312	
Hayden & Co., J. C	383,435	360,976	338,550	254,290	222,017	.....	.....	.....	.....	.....	
Johnson Coal Co	114,292	456,779	126,775	129,114	140,333	133,447	376,351	294,879	344,163	375,958	
Linderman & Skeer	352,568	338,852	341,045	385,996	360,894	370,175	87,813	.....	.....	.....	
Lytle Coal Co	.....	4,408	10,000	.....	13,499	26,509	170,264	215,419	232,991	235,991	
Penn Anthracite Coal Co	279,000	262,413	218,364	283,573	324,640	294,695	.....	.....	.....	.....	
Riley & Co., L. A	280,821	311,457	327,383	299,035	254,773	347,574	.....	.....	.....	.....	
Thomas Coal Co	123,619	120,150	109,467	109,754	87,967	85,421	77,128	80,620	68,946	83,174	
Upper Lehigh Coal Co	429,796	345,305	314,488	305,585	266,859	241,162	222,921	191,246	161,416	179,182	
Newton Coal Mining Co	177,314	238,475	204,904	263,721	299,488	328,279	152,254	96,579	195,752	144,545	
Pine Hill Coal Co	.....	.....	.....	.....	2,145	150	28,692	29,800	38,245	8,999	
St. Clair Coal Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
West End Coal Co	151,798	178,327	179,834	137,775	201,901	214,273	140,258	96,197	88,885	69,702	
Buck Run Coal Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Total	3,054,001	3,482,424	3,054,425	3,050,112	2,968,529	2,928,686	2,352,926	2,151,029	2,148,326	2,238,174	
100,000 to 300,000 tons	3,221,481	3,068,996	3,643,288	3,673,352	3,702,765	3,558,132	3,908,853	4,053,934	3,806,244	3,517,030	
Under 100,000 tons	997,191	1,061,695	874,393	755,900	858,601	949,964	1,314,301	1,514,968	1,556,004	1,383,671	
Grand total	37,560,401	41,635,540	42,619,489	44,280,618	42,225,439	46,556,682	43,640,726	42,002,187	41,800,382	47,950,858	

PHILADELPHIA, February 26th, 1914.

EFENDANT'S EXHIBIT No. 13.

OWING IN GROUPS THE PRODUCTION OF THE LARGE INTERESTS (INCLUDING INDEPENDENT OPERATORS FROM WHOM THEY USUALLY PURCHASED), AND USUALLY SELL THEIR OWN PRODUCT, FROM JANUARY, 1890, TO DECEMBER 31ST, 1911, INCLUSIVE.

1899	1900	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	Operator.
931,306	573,338	1,942,325	1,296,833	2,103,494	2,189,669	2,218,633	1,866,815	2,318,644	2,238,645	2,075,690	2,100,699	1,806,347	Scranton Coal Company.
225,066	213,369	313,047	323,267	462,096	186,786	504,462	543,714	603,447	593,716	642,114	655,442	620,289	Price Pancoast Coal Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Mt. Jessup & Moosic Mountain Coal Co.
193,961	102,166	109,718	17,089	111,612	131,695	103,620	89,051	32,768	117,834	123,136	158,857	190,243	Moosic Mountain Coal Co.
.....	47,855	66,352	6,369	72,505	107,974	102,961	89,020	42,608	130,761	149,614	193,872	226,729	Mt. Jessup Coal Co., Limited.
1,350,333	936,728	2,431,442	1,643,558	2,749,707	2,616,124	2,929,676	2,588,600	2,997,467	3,080,956	2,990,554	3,108,870	2,843,608	Total.
794,776	1,081,774	1,333,582	658,486	1,953,286	2,058,586	2,120,605	2,284,944	2,788,842	2,598,640	1,320,188	1,368,674	1,451,998	Susquehanna Coal Company.
511,937	533,479	691,603	351,714	642,456	486,578	490,587	482,672	518,544	423,841	1,364,630	1,378,511	1,586,492	Mineral R. R. & Mining Co.
.....	.....	.....	.....	277,157	296,253	294,896	304,491	344,733	.....	.....	.....	.....	Lykens Valley Coal Co.
582,378	530,575	569,399	203,438	175,653	167,605	171,431	147,822	195,830	593,562	643,599	600,978	650,552	Summitt Branch Mining Co.
.....	.....	.....	.....	154,399	261,920	319,343	285,368	320,612	280,749	240,632	257,642	256,530	Lytle Coal Co.
1,889,091	2,145,828	2,594,584	1,213,638	3,202,951	3,270,942	3,396,862	3,505,297	4,168,561	3,896,792	3,569,049	3,605,805	3,945,572	Total.
													Individual Operators Mining 500,000 to 1,000,000 tons:—
75,527	450,488	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	566,066	Elk Hill Coal & Iron Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Forty Fort Coal Co.
.....	.....	.....	.....	332,280	312,590	377,391	434,910	538,599	499,815	.....	54,612	526,221	Simpson & Watkins.
731,880	745,676	865,386	448,061	.....	.....	.....	.....	.....	.....	.....	.....	.....	Sterrick Coal Co.
527,694	393,266	429,074	137,391	297,533	326,418	295,269	222,362	271,801	270,473	279,043	261,407	248,071	Union Coal Co.
.....	.....	.....	173,003	289,059	399,269	457,082	429,036	465,237	415,994	446,932	562,203	601,660	Van Wickle & Co., A. S.
270,143	315,374	369,466	129,965	400,039	429,440	444,263	406,275	486,028	430,844	467,762	439,081	534,394	Pardee Bros. & Co.
545,628	570,300	431,239	144,441	277,289	309,810	289,369	227,136	.....	.....	.....	.....	.....	Pardee & Co., A.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Pardee & Co., Calvin.
299,026	319,562	332,352	254,033	521,853	383,371	275,437	181,123	60,375	177,917	195,243	145,491	63,698	Pardee Sons & Co.
2,449,898	2,794,666	2,427,517	1,286,894	2,118,053	2,160,898	2,138,811	1,900,842	1,822,040	1,795,043	1,388,980	1,462,794	2,540,110	North American Coal Co.
													Total.
													300,000 to 500,00 tons:—
242,248	200,100	360,254	218,197	110,840	133,369	136,775	158,800	156,161	230,281	284,812	279,235	294,684	Connell Coal Co.
111,865	93,721	116,283	51,792	102,661	103,820	.....	.....	.....	.....	.....	.....	.....	Connell & Co., Wm.
244,768	166,758	246,935	75,735	171,801	65,513	86,162	121,362	144,484	175,000	199,918	222,782	208,219	Dodson Coal Co.
152,491	143,818	176,424	91,636	190,013	186,242	174,604	142,432	172,596	248,027	199,695	287,319	333,767	Dodson & Co., C. M.
74,939	81,235	161,521	63,917	107,069	65,217	90,145	42,333	78,568	114,659	159,819	160,272	.....	Dodson & Co., T. M.
314,312	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Forest Mining Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Hayden & Co., J. C.
375,958	333,253	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Johnson Coal Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Linderman & Skeer.
235,991	226,759	233,673	66,865	.....	.....	.....	.....	.....	.....	.....	.....	.....	Lytle Coal Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Penn Anthracite Coal Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Riley & Co., L. A.
83,174	80,557	80,475	635	54,585	105,168	92,418	123,971	229,504	320,286	316,608	290,196	322,213	Thomas Coal Co.
179,182	191,166	216,777	130,919	218,197	236,123	233,254	178,588	218,472	215,592	170,797	149,582	125,587	Upper Lehigh Coal Co.
144,545	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Newton Coal Mining Co.
8,999	27,035	65,247	34,740	59,829	88,004	53,428	18,087	130,406	173,236	168,637	181,518	196,007	Pine Hill Coal Co.
.....	409	5,606	94,352	60,946	41,617	34,832	63,231	70,140	51,087	52,118	54,621	116,065	St. Clair Coal Co.
69,702	110,409	.....	44,457	248,938	306,838	274,475	232,864	408,496	407,246	366,676	410,537	467,917	West End Coal Co.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	82,671	211,959	213,446	Buck Run Coal Co.
2,238,174	1,655,220	1,663,195	873,245	1,324,879	1,331,911	1,176,093	1,081,668	1,608,827	1,935,414	2,001,751	2,248,021	2,277,905	Total.
3,517,030	3,210,168	2,751,526	1,658,550	2,645,285	2,530,151	2,266,590	2,327,990	2,757,105	2,983,368	3,268,298	3,168,513	3,494,040	100,000 to 300,000 tons.
1,383,671	1,348,805	994,527	650,785	1,291,314	1,267,534	1,396,368	1,067,258	1,115,884	963,486	906,873	863,765	1,013,334	Under 100,000 tons.
47,950,858	45,272,565	53,447,875	31,551,818	60,231,104	58,158,288	62,441,134	56,624,032	67,980,950	65,631,537	62,781,017	65,552,437	71,227,087	Grand total.

Q. What are your arrangements for selling coal to the Central Railroad Company of New Jersey? A. We charge them practically the same price as we charge any other customer. It is the average price.

Q. How are settlements made for the price between the companies? A. Made monthly—cash.

Q. Do you have your own accounting officers? A. Yes, sir.

Q. Under your direction? A. Yes, sir.

Q. And keep your own books separate and apart from any railroad books? A. Separate entirely.

Q. Have you adopted the method of keeping books prescribed by the Interstate Commerce Commission? A. No, sir.

Q. You keep your books in your own way yet? A. In my own peculiar way yet; yes, sir.

Q. Are your revenues, moneys, deposited in any way so as to confuse them with the Central Railroad Company of New Jersey? A. Entirely separate.

Q. In banks of your own selection? A. Of our own selection and choice.

Q. And you are allowed to draw checks of your own? A. We draw them out on our own form and without reference to the railroad in any way.

Q. You declare dividends, do you not? A. Yes, sir; semi-annual at present.

Q. Are these computed from your own books? A. Yes, sir.

Q. And distributed among your stockholders? A. Yes, sir. Our own checks.

Q. Take the dividends you pay to the Central Railroad Company of New Jersey. Are they paid on a mere book balance, or how are they paid? A. Paid in cash, by check.

Q. I show you a set of checks. Do you recognize them as dividend checks paid to the Central Railroad Company of New Jersey? A. Yes, sir.

(Checks shown witness and exhibited to counsel for the Government.)

Q. Were they drawn on your bank account? A. They were drawn on our account in the First National Bank.

Q. Were they banked in the regular way, did they go through the banks as indicated? A. Yes, sir; apparently so.

Q. So endorsed? A. The endorsement reads so, "Pay to the order of" and deposited by them.

Q. Is that the customary way in which you pay your dividends? A. Yes, sir.

Q. Does the Lehigh and Wilkes-Barre yearly pay large sums in freight moneys to the Central Railroad Company of New Jersey? A. Yes, sir.

Q. Does it pay the same rate of freight, the tariff rates? A. The tariff rates.

Q. Does it receive any discriminating favors from the railroad company? A. Not any.

Q. How are your merchandise and mine supplies shipped to you? A. Over the Central Railroad and the Lehigh Valley and Pennsylvania and Delaware and Hudson and the Lackawanna, whichever is the handiest to us.

Q. Do you pay the same demurrage as other shippers, under the demurrage tariffs? A. Yes, sir.

Cross examination.

By MR. COUDERT:

Q. You testified before in the Government's case? A. Yes, sir, in New York.

Q. Does the Central Railroad Company purchase much coal from the Lehigh and Wilkes-Barre Coal Company? A. Quite a little lot; yes, sir.

Q. It is one of the large purchasers, is it not? A. It is.

Q. Is that coal purchased for its own use? A. For their own supply coal, for their engines and stations.

Q. Wholly for their purposes? A. Yes, sir.

Q. What sizes mainly? A. Different sizes, broken coal, buckwheat, pea coal.

Q. All coal? A. They do not take much domestic size.

Q. Who orders that coal for the railroad? A. The superintendent of the railroad, to be shipped to various coaling stations.

Q. He asks you directly for it? A. Yes, sir; the same as any other customer, sends the order in once a month.

Q. There are monthly statements? They pay up monthly? A. Yes, sir.

Q. Do you consult with the president of your company in regard to the affairs of the company? A. Yes, sir.

Q. He has general direction of all those matters? A. Yes, sir.

Q. Your coal prices are fixed by the circulars? A. I suppose so.

Q. That you have not anything to do with? A. No, sir. The prices are furnished me and I make the bills out and collect the money.

Q. And practically that is your whole function? A. That is my function, yes. A few other things connected with it.

Q. What are your other functions in connection with your work? A. Everything that would apply to the office of the Auditor or bookkeeper, comptroller. Contracts, payments, all the payments are made over my name, examinations of all the payrolls, and everything else.

Q. Why are there two of these checks that counsel has put in here that are different? A. I could not tell you. I can surmise, but I would not care to venture a guess.

Q. For instance, the check of December 21st, 1910, is drawn to Drexel & Co., Philadelphia, and one on the same day drawn to the First National Bank and seems to have two signatures, the assistant treasurer and it is approved for payment by the secretary and treasurer, while the other checks seem merely to have the signature of the treasurer. Do you know why that is? A. We keep two bank accounts. We probably drew one check on one bank and one check on the other bank account.

Q. Who directs where the funds of your company shall be kept? A. The board of directors.

Q. The administrative officers of the company, so far as you know? A. Yes, sir.

Q. You do not know why these two checks were drawn differently from the others? A. No.

Q. Do you know whether it was on the request of the Central Railroad Company of New Jersey? A. No; I do not. It was probably because we might not have had enough money in one bank, but I do not know. I could not answer that question.

Q. You have only a general knowledge as to why funds are placed in various institutions? Are you told to check them into various banks? From whom do you get your instructions? A. From the president.

Q. You get all your instructions from the president of the company, do you not? A. Yes, sir. The president would naturally tell me.

Q. You look to him for all such matters? A. Yes, sir. I do not go off on my own hook and do these things.

Q. Do you know what influence or motives govern the distribution of the coal as it appears on this statement that you have furnished as to the coal at competitive points? (Referring to defendant's Exhibit 12.) Do you know why, for instance, 606 tons of Lehigh and Wilkes-Barre coal go to New Canaan and only 519 tons P. & R. coal go to that same destination? A. I think that the customers at New Canaan would prefer our coal. That would be my answer.

Q. For instance at Ridgeville, there are only 129 tons of your coal and there are shipped 842 tons of the P. & R. Have you any explanation of that? A. No. It is simply the fluctuation of the trade.

Q. These points are right together, are they not? They are very close together? A. I do not know. You will find these variations all the way through, simply because there is an established trade there more or less for one company's coal.

Q. Have you any explanation from your great knowledge of the business, why at New Canaan, which is just a short distance, ten miles from Ridgeville, there should be 6000 tons of your coal to 500 of the Philadelphia and Reading, while at Ridgeville, there are only 129 tons of your coal and 1842 tons of the Philadelphia and Reading? A. Possibly a higher class of people live at New Canaan. That is about the only answer I can give. Perhaps our salesman got there first and took the orders.

Q. You have no other explanation than the experience of your salesman and the quality of your coal? A. That is it.

Q. You attach no significance to the fact that in one of two places very close together there is a large amount of the coal of one company and in the other place a large amount of coal of the other? You do not know anything about why it was? A. No. As I said before, our salesman might have got there first and gathered the orders.

Q. You have had salesmen in both places, have you not? A. Probably so; yes, sir.

Q. You are not sure whether they are in both places? A. No. He might have skipped.

CHARLES F. HUBER, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your position, and with what company? A. Vice-president and general manager of the Lehigh and Wilkes-Barre Coal Company.

Q. Have you any connection whatever with the Philadelphia and Reading Coal and Iron Company? A. No, sir.

Q. Or with the Lehigh Coal and Navigation Company? A. No, sir.

Q. Or any of the railroads defendant in this suit? A. No, sir.

Q. Or the Reading Company? A. No, sir.

Q. What is your profession or occupation? A. Mining

engineer by profession. That is, I started in the business as a mining engineer, and successively filled the positions of chief engineer for this company, general superintendent, and for the last five years I have been vice-president and general manager.

Q. Over what fields of the anthracite coal regions do your operations extend? A. In the Northern or Wyoming field, the bulk of our operations are located there. We have two collieries in the Lehigh region near Audenried.

Q. These collieries are the Honey Brook collieries? A. The Honey Brook collieries; yes, sir.

Q. Has the coal company its own officers? A. Yes, sir.

Q. About how many employees has it? A. About ten thousand.

Q. Do any of the ten thousand employees work for the Central Railroad Company of New Jersey? A. No.

Q. Are they all paid by the Lehigh and Wilkes-Barre Coal Company? A. Absolutely.

Q. You have the same treasurer and secretary, however? A. Yes, sir.

Q. Taking colliery operations with which you are familiar in either of these regions, what is the minimum cost of production, which is the lowest within your knowledge, and what is the maximum? A. I could only answer that question as far as our own operations are concerned. Taking into consideration the difference in mining conditions and difference in royalties and other factors entering into the cost, our own collieries would vary as much as seventy-five cents a ton between the high and the low.

Q. Is there anything extraordinary or unusual in such a variation between good and bad collieries? A. No; I do not think there is. I think that all companies have those variations to some extent.

Q. And the like variation would exist as between the operation of independent collieries naturally I suppose? A. Certainly.

Q. Do you know Mr. William Griffith? A. I have met

the gentleman several times. I am not intimately acquainted with him, but I know him.

Q. Where does he live? A. He lives in Scranton at the present time.

Q. In the Wyoming region? A. In the Wyoming region.

Q. The Government filed in this case an exhibit, which appears on pages 143 and 144 of the stenographer's minutes of the Government's testimony (printed pages 76 and 77). This purports to be a tabulation made by this William Griffith for the Bond Record of an issue of June, 1896, published that month, but describing conditions and making prophecies on the basis of the year 1895. On page 144 of the record (printed page 77) that tabulation put in by the Government gives the Central Railroad Company of New Jersey a tonnage in the Southern or Pottsville field of 170,000,000 tons, and the area of coal lands covering three foot beds as being 4709 acres. Are you familiar with that Southern or Pottsville field? A. Yes; I have a general knowledge of it.

Q. Does the Lehigh and Wilkes-Barre Coal Company own a foot of land in that field? A. It does not own any land in the Southern field.

Q. So that is a clear error if it refers to any lands owned by the Lehigh and Wilkes-Barre Coal Company? A. Absolutely.

Q. Going to the Honey Brook lands, which you spoke of as owned by the Lehigh and Wilkes-Barre Coal Company in the Lehigh region, what acreage have you there? A. Our Honey Brook lands consist of sixteen acres in which we own the coal only, 1301.96 acres of coal and surface, and of surface only 6958.6 acres. That is a total of how much? A. Total of 8276.56 acres.

Q. Going back to the Wyoming region, what acreage does the Lehigh and Wilkes-Barre Company own there? A. Coal only 4497.42, coal and surface 8480.63 acres, surface only 9387.42 acres, making a total of 22,365.47.

Q. How is that total acreage divided as between fee and

a total of four times the tonnage which he gave the New York, Ontario and Western in the tabulation? A. Practically so.

Q. Taking the Erie Railroad Company, and the tonnage which was allotted to that company by Mr. Griffith in this exhibit, state in your own terms in general like manner your comments upon the way that prophecy has actually worked out. A. Mr. Griffith showed a tonnage of 160,646,500 tons. The reports show that there was mined from 1891 to 1912 inclusive 76,255,200 tons. There should therefore be remaining based on Mr. Griffith's estimate 84,391,300 tons. The tonnage remaining as fixed by the tax authorities is 115,034,200 tons.

Q. By how many million tons did he miss his guess? A. 31,000,000 in the case of that particular company.

Q. Going to the Delaware, Lackawanna and Western Railroad, as covered by Mr. Griffith in this exhibit of the Government, please put into the record your comment on his guess there. A. Mr. Griffith's estimate in 1896 is 332,332,000 tons. There has been mined in the period 1895 to 1912 114,113,900 tons. There should therefore be remaining 218,218,100 tons. As matter of fact, the taxing authorities have fixed it at 312,219,800 tons.

Q. So that after twenty years of mining the taxing authorities assessed the Delaware, Lackawanna and Western and the Delaware, Lackawanna and Western Company pay on the basis of its now having twelve million more tons of coal than Mr. Griffith gave them credit for in 1895? A. That is correct.

Q. Although they have mined out in the interim 114,000,000? A. Yes, sir.

Q. Take the Lehigh Valley. A. Mr. Griffith estimated in the case of the Lehigh Valley 179,400,000 tons. There have been mined in the period 1895 to 1912 44,236,700 tons, and there should, therefore, be remaining 135,163,300 tons. The assessment credit them with 61,071,200 tons.

Q. So the result there was that he was just as bad a

DEFENDANTS' EXHIBIT No. 14.

STATEMENT SHOWING COAL OWNERSHIP OF THE SEVERAL INTERESTS IN THE NORTHERN OR WYOMING FIELD.

ITEM.	D. & H.	N. Y. O. & W.	ERIE.	D. L. & W.	L. V. R. R.	C. R. R.	P. R. R.	INDIVIDUALS.	TOTAL.
Griffith's Estimate—Railroad tonnage owned	115,823,200	.....	143,146,550	300,853,150	161,212,350	342,660,500	86,062,600	.....	1,149,758,350
Griffith's Estimate—Railroad tonnage under contract	.....	13,971,100	17,499,950	31,478,850	18,187,650	5,040,750	15,283,450	.....	° 101,461,750
Griffith's Estimate—Uncontrolled tonnage	.....	.....	.....	.....	.....	.....	.....	26,910,650	° 26,910,650
Griffith's Estimate—Total unmined tonnage	115,823,200	13,971,100	160,646,500	332,332,000	179,400,000	347,701,250	101,346,050	26,910,650	1,278,130,750
Tonnage mined 1895 to 1912, inclusive	94,275,500	25,730,800	76,255,200	114,113,900	44,236,700	66,553,600	19,433,700	*149,193,500	589,792,900
Tonnage remaining on basis of Griffith's Estimate	21,547,700	11,759,700	84,391,300	218,218,100	135,163,300	281,147,650	81,912,350	122,282,850	688,337,850
Tonnage remaining on basis of assessments	138,792,800	25,417,800	115,034,200	312,299,800	61,071,200	350,556,600	40,058,600	*103,294,500	1,146,525,500

NOTE.—* This item represents total of items marked °

guesser as before except that he over-guessed? A. Over-guessed seventy-four million.

Q. Take the Central Railroad of New Jersey in the Wyoming region. A. Mr. Griffith's estimate was 347,701,250 tons. There has been mined in the period 1895 to 1912 66,553,600 tons. There should therefore be remaining 281,147,650 tons. The basis of the assessment on tonnage there in 1913 is 350,556,600.

Q. Have you taken into account the West End and Melville properties? A. I have put those in just as he had them in his report in the same section.

Q. What you have just stated as to the Jersey Central covers those? A. Covers those.

Q. Will you comment upon his guess in respect to the Pennsylvania Railroad? A. He estimated that the Pennsylvania Railroad had 101,346,050 tons. There has been mined from 1895 to 1912 19,433,700 tons. There should therefore be remaining 81,912,350 tons. As a matter of fact, the assessment shows 40,058,600 tons.

Q. So he missed it by a hundred per cent. there in his guess? A. Yes, sir.

Q. He then summarized the amount of individual coal at the foot of his exhibit. Please put into the record your comment on that? A. He estimated individual coal at 26,910,650 tons. As a matter of fact, there has been mined by individuals in that period 149,193,500 tons.

Q. So he missed that guess by about five hundred per cent.? A. Yes, sir. And there is remaining in the hands of individuals, on the basis of the assessment 103,294,500 tons.

Q. Did you at my request make a summary of these exhibits of Griffith's and your comments? A. Yes, sir.

Q. Is the exhibit which I show you a copy of that? A. Yes, sir.

Q. Will you please put that in evidence?

(Witness produced statement marked "Defendant's Exhibit 14.")

Q. Has there been a good deal of tax litigation over the assessments in the Wyoming field in the last twenty years? A. Yes, sir. Particularly in the last eight years.

Q. And it has been an almost constant fight on the subject of the assessors to get the quantity of coal up, and the coal owners to try to keep their assessments down? A. That is the fight.

Q. Is there a lull in the fight now, and are the assessments being acquiesced in by the companies as they stand now, and payment being made? A. Yes, sir; there is only a temporary lull pending the taking of one or two cases to the Supreme Court that have been tried out in the lower courts.

Q. There has been a great deal of litigation over the question during the last eight years, has there not? A. Yes, sir.

Q. How have the assessors arrived at their figures on this minable coal contained in the mines? A. The assessments in the upper or Northern field are based on the minable coal remaining in the several tracts as established not by the assessors directly, but by the county engineers or by the engineers specifically employed by the county for the purpose of estimating the remaining minable coal under the several tracts, which information is furnished to the assessors for the purpose of assessing.

Q. Those are engineers who go into the properties and survey them and look at the mine maps, and so forth? A. They have had access to all the data. They practically had access to the data of the companies operating these properties.

Q. In the Wyoming region the system of mining is far advanced, is it not, generally speaking. A. The territory is very thoroughly developed as a whole.

Q. Thoroughly explored? A. Yes, sir.

Q. Has a great deal of that exploration been done in the last twenty years? A. Yes, sir; a good bit of it, particularly in the deeper territory.

Q. For the last year of the available reports of the Bureau of Mines of Pennsylvania, how many collieries

for the mining of anthracite coal are reported? A. 276 operations.

Q. How many of these are the Philadelphia and Reading Coal and Iron Company? A. In that report the Philadelphia and Reading Coal and Iron Company had thirty-five collieries.

Q. How many collieries had the Lehigh and Wilkes-Barre Coal Company. A. Ten.

Q. How many were the total nnmber of washeries producing anthracite coal? A. Fifty-one.

Q. How many of those were operated by the Philadelphia and Reading Coal and Iron Company? A. Four.

Q. And by the Lehigh and Wilkes-Barre Coal Company? A. One.

Q. As matter of fact, has there been any change in the number of collieries operated actually by the Philadelphia and Reading Coal and Iron Company since that report? A. Yes, sir. At the present time the Philadelphia and Reading Coal and Iron Company has thirty-one collieries and five washeries, and the Lehigh and Wilkes-Barre has eleven collieries and three washeries.

Q. Did you excerpt from that 1911 report from the Bureau of Mines the official report of the individual operators and the tonnage produced by each in the year 1911? A. Yes, sir.

The witness produced the following statement:—

STATEMENT SHOWING INDEPENDENT OPERATORS AND TONNAGE PRODUCED BY EACH IN THE YEAR 1911.

1.	Archbald Coal Company	103,336
2.	A. D. & F. M. Spencer Coal Company	28,007
3.	Alden Coal Company	274,358
4.	A. Pardee & Company	541,253
5.	Alliance Coal Company	120,263
6.	Bull's Head Coal Company	20,733
7.	Bright Coal Company	14,995
8.	Brighton Coal Company	99,964
9.	Buck Ridge Coal Company	124,479
10.	Buck Run Coal Company	214,317

11. Butcher Creek Coal Company.....	18,248
12. Black Heath Coal Company.....	1,773
13. Carbondale Coal Company.	20,362
14. Carney & Brown Coal Company.....	37,552
15. Clearfield Coal Company.	30,804
16. Carleton Coal Company.....	380
17. Clear Spring Coal Company.....	40,652
18. C. M. Dodson & Company.....	334,630
19. Cambridge Coal Company.	70,144
20. Colonial Collieries Company.....	153,056
21. Connell Anthracite Mining Company. . ..	296,930
22. Clinton Falls Coal Company.	7,100
23. Dolph Coal Company, Ltd.	141,914
24. Dunn Coal Company.	10,000
25. Dreshman Coal Company.	4,966
26. Dodson Coal Company.....	209,178
27. Darkwater Coal Company.	89,830
28. Economy Light, Heat & Power Company	37,550
29. Elliott McClure & Company.	245,858
30. East Boston Coal Company.	137,772
31. E. S. Stackhouse Coal Company.....	47,067
32. Excelsior Coal Company	250,697
33. Enterprise Coal Company.	206,176
34. Estate A. S. Van Wickle.	251,852
35. Evans Colliery Company	6,942
36. East Lehigh Coal Company.....	49,964
37. Fall Brook Coal Company.	3,887
38. Forty-Fort Coal Company.....	572,810
39. Greenridge Coal Company	110,180
40. Geo. F. Lee Coal Company.....	91,470
41. G. B. Markle & Company.....	1,121,164
42. Girard Mammoth Coal Company.....	179,830
43. Greenough Red Ash Coal Company.....	247,894
44. Gorman & Campion	21,993
45. Humbert Coal Company.	69,759
46. Herwood Coal Company.	204,032
47. Hazle Mountain Coal Company.	135,826
48. Harleigh Brookwood Coal Company.....	102,280
49. H. H. Smith & Company.	86,501

50.	John S. Wentz & Company.	97,123
51.	John H. Davis Company.	30,377
52.	Jermyn & Company.	586,582
53.	Kingston Coal Company.	2,108,363
54.	Lincoln Hill Coal Company.	5,068
55.	Lackawanna Coal Company, Ltd.	442,149
56.	Lehigh Coal & Navigation Company. . . .	3,615,143
57.	Morse Hill Coal Company.	19,074
58.	Mount Jessup Coal Company, Ltd.	235,713
59.	Moosic Mountain Coal Company.	194,088
60.	Marian Coal Company.	16,695
61.	Minooka Coal Company.	9,193
62.	Moosic Coal Company.	1,458
63.	McCauley Coal Company.	1,917
64.	Miner's Mills Coal Mining Company. . . .	37,855
65.	Mt. Lookout Coal Company.	309,922
66.	M. S. Kemmerer & Company.	123,162
67.	M. A. Gerber & A. S. Seaman.	20,035
68.	Midvalley Coal Company.	340,602
69.	Moses Meyer.	5,405
70.	Maryd Coal Company.	214,711
71.	Mill Creek Coal Company.	119,833
72.	Mt. Hope Coal Company.	80,275
73.	Northwest Coal Company.	180,243
74.	Nay Aug Coal Company.	78,142
75.	North End Coal Company.	32,696
76.	North American Coal Company.	63,838
77.	Northern Anthracite Coal Company. . . .	172,824
78.	Outlook Coal Company.	2,620
79.	Oxford Coal Company.	140,998
80.	Oak Hill Coal Company.	294,240
81.	O'Boyle-Foy Anthracite Coal Company. . .	120,169
82.	Price Pancoast Coal Company.	624,821
83.	Peoples Coal Company.	115,469
84.	Pittston Coal Mining Company.	49,190
85.	Plymouth Coal Company.	281,607
86.	Parrish Coal Company.	270,435
87.	Pardee Bros. & Company.	610,361
88.	Phillips Brothers Coal Company.	41,165

89. Port Carbon Coal Company.	30,252
90. Pine Hill Coal Company.	498,622
91. Red Ash Coal Company.	208,961
92. Raub Coal Company.	128,772
93. Rissinger Brothers & Company, Incorporated.	18,652
94. Randall & Schaad Bros. Anthracite Coal Co., Ltd.	7,676
95. Starrick Creek Coal Company.	530,907
96. South Side Coal Company.	5,549
97. Schuylkill Lehigh Coal Company.	15,658
98. St. Clair Coal Company.	324,685
99. Stillwater Coal Company.	3,750
100. Shipman Koal Company.	212,001
101. Thorne-Neal Washery Company.	1,469
102. Thomas Colliery Company.	326,618
103. Trevorton Colliery Company.	100,101
104. Thomas R. Reese & Son.	4,605
105. Upper Lehigh Coal Company.	130,531
106. Wilkes-Barre Anthracite Coal Company,	35,475
107. West Nanticoke Coal Company.	47,268
108. West End Coal Company.	712,631
109. Wolf Coal Company.	58,234
110. William Niewenter.	4,053
111. W. H. McTurk Coal Company.	112,435
112. White & Company.	21,949
113. West Mountain Coal Company.	14,082
114. W. R. McCready.	9,839
115. William Cooke Estate.	4,896
116. Yost Mining Company.	28,434
Total.	22,479,394

Q. In years past, I refer to four or five years ago, how many of the so-called percentage purchase contracts did the Lehigh and Wilkes-Barre Coal Company have? A. They had three of those contracts.

Q. With what companies? A. With the Red Ash Coal Company, the Melville Coal Company and the Parrish Coal Company.

Q. Are those percentage purchase contracts now in force? A. No, sir.

Q. How long ago were they abrogated? A. They have not been in force since January, 1913.

Q. Who was the owner of the lands of the Red Ash Coal Company? A. The lands of the Red Ash Coal Company were owned partly by the Coal Company itself, and were partly lands of the Lehigh and Wilkes-Barre. The lands of the Melville Coal Company and the Parrish Coal Company were entirely lands of the Lehigh and Wilkes-Barre—owned or controlled.

Q. So that it is true, is it, that all three of these purchase contracts were contracts with the lessees of lands of the Lehigh and Wilkes-Barre Coal Company? A. Yes, sir.

Q. As to the Parrish lands and Melville lands, the only coal those companies mined was owned by the Lehigh and Wilkes-Barre Coal Company in those collieries, the output of which the Lehigh and Wilkes-Barre Coal Company purchased? A. That is absolutely true as far as the Melville Coal Compay is concerned. As far as the Parrish Company is concerned, they did own in fee about four acres of coal lands that they acquired after the lease was made with the Lehigh and Wilkes-Barre.

Q. How much was the acreage that the Lehigh and Wilkes-Barre leased to them? A. Probably five hundred acres.

Q. Was there any effort made on the part of the Lehigh and Wilkes-Barre to make new contracts with the three percentage contracting collieries, the Red Ash, Melville and Parrish? A. No; none whatever.

Q. Why was not that done? A. As matter of fact, we were rather glad to abrogate the contracts.

Q. Why? A. There were several reasons. In the first place, the question of the proper preparation of the coal was more or less of a bone of contention, and in the second place, we were confronted with the condition of taking certain sizes during dull periods and stocking them for indefinite future sale, meaning by that that we purchased the coal and we paid for it not later than the twentieth of each fol-

lowing month, on the basis of 65 per cent. contracts, and if we had no market for certain sizes, we stored it, and if we could sell it the following winter all well and good, and if we could not, we carried it over. Then again, in the latter years of the contracts there was considerable discord because of the fact that the larger companies would not take advantage of unusual market conditions and increase the price to the consumer—that was particularly so following the suspension of 1912—which resulted in considerable friction, and in one instance, the Melville Coal Company in an open violation of the contract, because the independent operator could secure, under the conditions as they existed a price in advance of the price that we were charging the consumer.

Q. In spite of what you say about your willingness to get rid of the 65 per cent. contracts, I observe that you took over the property which was previously under lease to the Parrish Coal Company, which was one of the three parties to these percentage purchase contracts. Why did you do that? A. The acquisition of that property had no bearing whatever on the 65 per cent. purchase contracts. At matter of fact, negotiations for taking over that property were under way before the decree of the Court in the matter of the abrogation of the 65 per cent. purchase contracts was handed down. The facts were that this was a term lease which expired the 1st of June, 1916, and we realized that in the effort of the lessee to do the best he could with the proposition during the closing years of the lease that there would be considerable damage done to the property, and, therefore, looking to its conservation, as we were owners of all the coal, we concluded to take the lease over and operate it ourselves.

Q. And of that property which you took back from the Parrish Coal Company the Lehigh and Wilkes-Barre owned over five hundred acres? A. Yes, sir.

Q. And was taking back its own property? A. Taking back its own property.

Q. And the Parrish Coal Company owned, I believe you stated, about four acres? A. About four acres of coal land.

Q. What did you pay for that property? A. We paid $675,000.

Q. Was the figure arrived at as a matter of protracted negotiation with the other side? A. Yes, sir.

Q. What did you allow them for their own coal lands? A. The coal and surface which they hold in fee $24,000.

Q. So that the $24,000 was to pay them for the only coal they owned; is that it? A. Yes, sir; and the surface—the value of the surface was valued as much as the coal.

Q. So you paid him $24,000 for the coal land he did own and the surface, and the surface was put at more than the coal lands? A. Yes, sir.

Q. Were there extensive culm banks on that property? A. Yes, sir.

Q. And in whom laid the equity and profit from working them? A. In the Parrish Coal Company.

Q. What did you pay them for the physical coal already mined on the surface of the ground? A. $285,000.

Q. You did not have any title to that coal? A. We only had a royalty interest in it, as they prepared it, they had two washeries erected on the property at the time, and were operating on both of these culm banks.

Q. On what basis did you fix the price in your own mind? A. We fixed that price on the basis of what profit they could reasonably make out of the working of these banks, less a certain discount, of course, which we reserved to ourselves for any chance there might be in the working of the properties ourselves.

Q. Did the Parrish Coal Company own some dwelling houses there? A. Yes, sir.

Q. What did you pay for them? A. $12,232.

Q. Did they have a very considerable amount of colliery equipment? A. They had two collieries in operation, all the breakers, machinery, plant of every kind necessary to the operation of these collieries.

Q. Was it worth what you paid for it? A. We think it was. We paid them $333,328. That is what we figured on that item.

Q. Did they have some materials and supplies on hand? A. Materials on hand inventoried at $20,440.

Q. The total of these various items makes up how much? A. $675,000, the consideration paid.

Q. And not one penny of that for the coal you owned, as Mr. Coudert suggested a few moments ago? A. No; we paid nothing whatever.

Q. About that time had there been any natural condition in the mine that made you uneasy about its continuing in their possession? A. As a matter of fact, at the time we took this colliery over they had a mine fire at one of the collieries, and we were very much exercised as the owners of the property, in fact, we put our own men in there to help to seal it off and to control the situation, and when we took this one property over it was idle by reason of the mine fire that existed there at the time.

Q. Were you apprehensive as to the methods they had adopted for heading off the fire? A. We thought they were moving too slowly. We took hold of the proposition in order to hurry it along and do something definite. We were afraid that by the methods that they were handling it, it would spread to such an extent that it would be a very hard matter to get it under control at all.

Q. I direct your attention to a little of the ancient history of the Lehigh and Wilkes-Barre prior to 1874. Did the Lehigh Coal and Navigation Company own a large acreage in the Wyoming Region? A. Yes, sir.

Q. What was done with the land holding of the Lehigh Coal and Navigation Company in the Wyoming region in that year, 1874? A. To go back to 1873 really, on December 19th, 1873, there was an agreement made between the L. C. & N. Company and the Honeybrook Coal Company, whereby the L. C. & N. Company agreed to transfer all of its holdings to the Honeybrook Coal Company. Before the deed was drawn the Honeybrook Coal Company and the Wilkes-Barre Coal and Iron Company were merged in the Lehigh and Wilkes-Barre Coal Company, January 20th, 1874. Therefore, pursuant to this agreement, the property of the L. C. & N. Company passed to the Lehigh and Wilkes-Barre in 1874.

Q. Of course, your statement refers only to the property

of the Lehigh Coal and Navigation Company in the Wyoming region? A. Yes, sir.

Q. About what was the acreage thus conveyed to the Lehigh and Wilkes-Barre Coal Company by the Lehigh Coal and Navigation Company January 20th, 1874, or near that date? A. The total holdings of the Lehigh Coal and Navigation Company in the Wyoming Region transferred to the Lehigh and Wilkes-Barre were fee lands, 6937 acres and 39 perches.

Q. At or about that time did the Lehigh Coal and Navigation Company also assign to the Lehigh and Wilkes-Barre Coal Company a number of leasehold properties? A. Yes, sir.

Q. As matter of fact, that was March 28th, 1874, was it not? A. March 28th, 1874.

Q. What is the total of the leased lands, the leases of which were thus assigned at that time to the Lehigh and Wilkes-Barre Coal Company by the Lehigh Coal and Navigation Company? A. 870 acres.

Q. Turning for a moment from the properties of the Lehigh Coal and Navigation Company in the Wyoming region to the lands of the Lehigh Coal and Navigation Company in the Lehigh and Schuylkill regions, was there at about this same time any transaction involving these lands in the Lehigh and Schuylkill regions? A. There was a lease made March 28th, 1874, of the Lehigh Coal and Navigation Company to the Lehigh and Wilkes-Barre Coal Company, covering all its Lansford lands in Carbon and Schuylkill Counties, for a term of three hundred years. As matter of fact, the Lehigh and Wilkes-Barre operated those lands under that lease from 1874 until 1877, when the receivership occurred.

Q. Then the Lehigh and Wilkes-Barre Coal Company went into the hands of a Receiver? A. Yes, sir; in 1877.

Q. And is it a fact that by a decree of the Circuit Court of the United States for the Western District of Pennsylvania, affirming the Master's findings, January 3d, 1878, these latter lands, called the Lansford lands, and covered by the three hundred year lease, reverted to the Lehigh Coal and Navigation Company? A. Yes, sir. That is correct.

Q. Since that date, January 3d, 1878, has the Lehigh and Wilkes-Barre Coal Company had any relations whatever to the Lehigh Coal and Navigation Company's lands in the Lansford District? A. None whatever.

Q. Or to its operations in any way? A. No, sir.

(At one o'clock P. M. a recess for one hour was taken.)

Cross examination.

By MR. COUDERT:

Q. You spoke in your direct examination of the difference between maximum and minimum cost of production of coal. Will you kindly tell me what is the minimum and what is the maximum cost of production? A. I could not give you that exactly. Do you mean for our own operations?

Q. Precisely. That is, the operation of the Lehigh and Wilkes-Barre Coal Company. A. Taking the operations of the Lehigh and Wilkes-Barre Coal Company, our cost of production, including operation, taxes, sinking fund and general expenses would vary from $1.75 to $2.40 to $2.50 a ton.

Q. Will you try to give me with as much accuracy and exclusiveness and inclusiveness as possible everything that is covered by that cost? A. That covers operating cost.

Q. That is the physical cost of mining? A. Of mining; yes, sir. It includes taxes, State and local, sinking fund, and the general office expenses of handling and selling.

Q. You do not think of anything else that it includes? A. No, sir.

Q. How large a sinking fund? A. About twelve cents a ton.

Q. Then in referring to a maximum and minimum cost you were referring merely to maximum and minimum as far as your own company was concerned? A. Yes, sir.

Q. You were not speaking generally of other companies? A. No, sir. I think, however, that the same variation which applies to our operations would apply to a good many others.

Q. You are pretty sure of that from your general familiarity with mining operations? A. Yes, sir.

Q. Do your maximum and minimum compare approximately with the other companies, so far as you know from your general knowledge of coal operations? A. I might with some of them, but not with all of them. I think the general average of some of them is considerably higher than ours.

Q. You think you are one of low average? A. I think so; yes, sir.

Q. Do the coal companies generally keep estimates of the amount of minable coal actually in the ground which they own? A. I cannot say whether they do or not. As far as our own company is concerned, we have made estimates along those lines because of the fact that the basis of taxation in the Northern Field is now based on the quantity of minable coal in the ground, and for the purposes of determining that, the county has employed its own engineers to estimate the unmined tonnage in the several properties, and as a natural sequence of that sort of taxation, we have estimates of our unmined coal.

Q. Have you furnished those estimates to the assessors, or do you maintain them simply for your own information? A. We have thrown open to the county engineers our maps and data relative to our properties, and their estimates are based, to a large extent, on that information.

Q. And the information which you gave to the county engineers included your own estimates of the unmined coal, did it not? A. Really, we have no definite information of our own. We sort of accepted the general result in a way that this calculation produces as to what our property contains.

Q. Would you be good enough to describe to me in as much detail as you may be able from recollection, the nature of the data that the Lehigh and Wilkes-Barre Coal Company has as to the estimated amount of its coal unmined in the ground? A. As far as our own property is concerned, I think the figures that I gave here represent very closely, under present conditions, the unmined tonnage of the Lehigh and Wilkes-Barre.

Q. In what data, memoranda, papers or books of your

company do these estimates appear? A. We have no memoranda of them whatever, except a copy of the memoranda which is on file in the assessment offices.

Q. When was this law for the taxation of unmined coal you speak of passed? A. The taxation for a number of years in the Upper District has been on the basis more or less of unmined coal, but there was a new estimate made in 1912, as I recall it, covering the entire field by the county engineers, and the figures I am giving here now are based on that estimate.

Q. As vice-president of the Coal Company, familiar with all its general affairs, will you kindly tell me whether or not, as a fact, there was not in the possession of the Coal Company prior to that date, 1912, as to which you spoke, estimates of the amount of coal unmined or minable belonging to the company? A. As I recall it, there was one approximate estimate made, and, as I recall the figures, they show a little less than what the taxing authorities show here now.

Q. In what kind of a document was that estimate made? In an engineering report, or in what? A. I do not know. That was just tabulated on some sheets, I believe, at one time, as a sort of a rough approximation of what there was in the company's property.

Q. That was made about when? A. I could not give you that definitely. I do not recollect.

Q. Roughly? A. I cannot give it even roughly. I did not make it myself.

Q. Do you remember who made it? A. No; I do not.

Q. Could you let me see it? Could you find it? A. I do not know whether I could find it just at the present time.

MR. COUDERT:—I will ask you to look for it, and produce it for me, if it exists in your files in the archives of your company.

Q. Was that prior to 1912 the only estimate of the minable coal of your company of which you know anything of which is in existence? A. That is the only one that I know anything about; yes, sir.

Q. As far as there were any data as to the minable coal,

it was all contained in that paper or series of papers? A. Yes, sir.

Q. Coming subsequently to that period, 1912, as to which you have spoken, what was done by anybody in connection with the company, or for the company, toward making any estimate of the minable coal? A. There was nothing done.

Q. No figures at all? A. No.

Q. I understood you, and perhaps I misunderstood you, and if I am wrong, will you correct me, but I understood you to say by reason of this new assessment that it was necessary to make, the company itself had made estimates of minable coal? A. No. The county made the estimate of the minable coal.

Q. What did the company itself do in connection with that new assessment or subsequently thereto in reference to finding out just what minable coal it owned? A. There really was not anything for us to do. Of course, the estimate showed on its face the minable coal after the statement had been compiled.

Q. That was made by the county engineers? A. Yes, sir.

Q. Did any engineers or officers or employees connected with the Lehigh and Wilkes-Barre Coal Company make any estimate whatever of your minable coal other than the estimate as to which you have already testified? A. No.

Q. Is it then a fact, to your personal knowledge, that down to the present day, the only estimate of unminable coal made directly by the Lehigh and Wilkes-Barre Coal Company and any of its officers or employees or persons connected with it, is that one which you testified was made prior to 1912? A. That is not exactly the fact.

Q. Let me have all the facts in connection with it. A. The proposition is this; that as these county engineers went over this data for the purpose of compiling these tonnages or the coal that was unmined for the purpose of taxation, they were more or less in touch with our engineers, and our engineers in touch with them, and there was more or less criticism on our part as to what was to be included and what was not to be included in this estimate, and when it was made up we had a very good

general knowledge of just what had been done and what had been included in the estimate.

Q. That is the official estimate of the tax engineers of which you are now speaking? A. Yes, sir.

Q. So that estimate was made, if I understand you correctly, largely in co-operation with the county engineers and the engineers of the Lehigh and Wilkes-Barre Coal Company; is that correct? A. The engineers for the county, of course, had to come to the Lehigh and Wilkes-Barre, and, of course, to every other company to a large extent, in order to get the acreages necessary for the compilation.

Q. In order to make that compilation, what factors did they take? They took, first, the acreage, did they not? A. They took the acreage—the acreage of each seam.

Q. Enumerate the factors that they took in reaching that quantity of minable coal. A. They took into consideration all of the conditions. That is, they took into consideration the area of the seam, the nature of the seam, the depth of the seam, the general geological conditions, and they deduced from that the amount of coal minable out of a given area or a given seam under all those conditions.

Q. Did they in making that estimate use the estimate you had already in existence? A. They never used that estimate.

Q. Did your company have any controversy or any litigation with the assessors over that assessment, or any phase of it? A. On this assessment proposition I think there are about six hundred appeals pending now in Luzerne County.

Q. Just from your own company alone? A. No; from all the companies.

Q. Confine yourself to your own company for the moment. A. The whole proposition is one of controversy and litigation. I may say, however, that the dispute as it stands to-day is more on the value placed on the coal than the quantity of coal.

Q. Will you be good enough to tell me how far, if at

all, any of these very numerous lawsuits or controversies you have mentioned affect the question of the quantity of minable coal? A. Of course, in those suits I may say that we do not go very extensively into the quantity of minable coal. The Supreme Court has held that the value of an acre of coal is the value of the superficial acre, and has practically barred the foot acre method in arriving at values, and, therefore, the proposition has not been attacked entirely on the question of quantity of minable coal.

Q. Has your company then coincided in and consented to as correct the amount of minable coal that appears in the estimates which you put on record? A. No, sir; we have not.

Q. Have you disputed that in any way? A. We have not either disputed it or acquiesced in it.

Q. You have just stood back? A. No; we are appealing from those valuations, on the ground that the valuation put on this land as coal land is entirely too high and out of all proportion to its real value.

Q. In disputing that question of valuation have you raised any issue as to the amount of minable coal? Has your company stated that the minable coal was less than that of the estimate? A. I do not know that we have. We have only tried out one case for our own company—that was tried out in 1907 or 1908, somewhere along there—and while we showed in that case the minable coal in a particular tract, we only did that for the purpose of showing the relationship between that tract and a virgin tract that had a certain quantity of coal that had sold for a certain price in the open market.

Q. As an engineer familiar with the questions of mining, the value of coal deposits, &c., can you tell me whether or not this statement is a fact, "that every railroad coal company has an accurate estimate of the unmined coal in its lands"? A. I do not know whether they have or not.

Q. You do not know whether that is true of the Philadelphia and Reading Coal and Iron Company? A. No; I do not.

Q. You have no knowledge at all of it? A. I have no knowledge at all of it.

Q. In your criticisms regarding the Griffith estimate, do you know whether or not some of the companies as to which you have testified have not acquired very considerable coal lands from which they have mined since 1895? A. Yes, sir; there have been some acquisitions of collieries by those companies during this period, but, of course, in the absence of any specific data in Mr. Griffith's record as to just what was included here and what was included there, I could not reconcile the proposition absolutely as of to-day with what it was then. But, however, the fact remains that the total of the field is right absolutely.

Q. The total of your figures? A. The total of the field—of the Northern Field. I am testifying here with reference to the Northern or Wyoming Field.

Q. You mean the total of your own figures? A. Yes, sir. The total of the figures and the total of these discrepancies that there may have been in here is correct as applying to the field as a whole.

Q. I am not questioning that at the moment, but I would ask you what the effect would be upon your comparative criticism of these figures if some of these companies as to which you spoke acquired very considerable coal lands since then and mined from them. Would it not change the whole situation? A. It would not have any material effect. I will state as an example, the D. L. & W., had, according to Mr. Griffith, 332,000,000 in 1895. Now they have acquired *ad interim* just one colliery. That is all. They have mined 114,000,000, and they should have remaining 218,000,000. And yet, on the basis of the assessment they have 312,000,000. So that Mr. Griffith's guess was out 100,000,000, and the acquisition of one colliery would not very materially change those figures.

Q. How far do your data cover other companies as to which you have spoken in regard to the acquisition of additional land? A. As far as our own company is concerned, we acquired nothing in that period.

Q. How about the Lehigh Valley, for instance? A.

Take the Lehigh Valley. The Lehigh Valley acquired several different colliery operations, and yet, on the basis of Mr. Griffith's showing, having acquired all those operations *ad interim,* there is a shortage of 74,000,000 tons on Mr. Griffith's estimate.

Q. Does your data show how much they did acquire? A. No; I am just speaking from my recollection of the situation.

Q. In making up your estimate and comparing it with the Griffith estimate, you did not, I think, mention the Philadelphia and Reading Coal and Iron Company? A. They have no holdings in the Northern or Wyoming Field.

Q. Have you, as matter of fact, any knowledge in regard to their unmined deposits? A. No; I have not.

Q. Then you have made up no data as to them? A. No data. I am covering simply the Northern or Wyoming field in which the bulk of our operations are located, and with which I am familiar.

Q. In your statement showing individual operators and tonnage produced by each in the year 1911, you do not, do you, by individual operators, refer to so-called independent operators? A. Independent operators it should read. It should read "Independent operators." I corrected it on the copy which I had in my own files, and it was not corrected in this memorandum you have.

Q. Do you now testify that all of these 116 companies, or individuals, are independent in the sense that they are not connected with any of the great railroad coal companies? Is that what you mean by that statement? A. Yes, sir. That is what I mean. Except as covered in the note at the bottom of the statement.

Q. How about the Alliance Coal Company? Is that an independent? A. Yes, sir.

Q. It is not connected with any of the railroad coal companies? A. No, sir.

Q. The Lehigh Coal and Navigation Company, or any of them? A. I do not consider the Lehigh Coal and Navigation Company a railroad coal company. We con-

sider the Lehigh Coal and Navigation Company an independent company.

Q. And you class it with these independent companies? A. Yes, sir.

Q. From your great familiarity with the general coal situation, would you also class the G. B. Markle and Company as independent? A. Absolutely.

Q. Is not that connected in some way with the Lehigh Valley Company? A. No.

Q. Are you speaking from knowledge? A. I talked to Mr. Markle a great many times about his operations. I know that he sells his own coal, markets his own coal.

Q. That is practically all you know about it? A. I know that it is not a Lehigh Valley operation.

Q. Then are you quite positive that the Lehigh and Wilkes-Barre Coal Company has not either prior to 1912 or subsequently thereto made any estimate of the unmined coal which it had either in whole or in part, save the one to which you have testified? A. Nothing except what was gotten up in connection with the county engineers on this proposition of taxation.

Q. And the one that was made before 1912? A. Yes, sir.

Q. And you are very sure about that? A. I am quite sure about it.

Q. That is exclusive of anything? A. I do not know of anything else. Absolutely not.

Q. Do you remember as to whether the lease to the Parrish Coal Company contained any clause regarding the shipments of coal to be made over the Central Railroad of New Jersey? A. I am not prepared to say positively as to that. I think it did, but I am not prepared to say positive now; it is a long time since I have gone over that.

SAMUEL D. WARRINER, having been duly sworn, was examined as follows:—

MR. REYNOLDS:—I desire it noted on the record that I have called Mr. Warriner as a witness on behalf of the Lehigh and Wilkes-Barre Coal Company and the Philadelphia

and Reading Coal and Iron Company, and that his examination will not be in behalf of the Lehigh Coal and Navigation Company.

Before examining Mr. Warringer I put into the record an excerpt from the old Reading suit being part of the deposition of W. A. Lathrop, called as a Government witness, the testimony having been given on October 7th, 1908 and October 14th, 1908, Mr. Lathrop then being the president of the Lehigh Coal and Navigation Company.

Deposition of W. A. Lathrop, called as a Government witness in the old case and given October 7th, 1908, and October 14th, 1908. (Volume 2, pages 44, 45, 46, 47, 48, 50, 51, 52, 53, 71, 72, 75, 76, 77, 80, 84, 86.)

W. A. LATHROP, a witness for the plaintiff, having been duly sworn, was examined as follows:—

Direct examination.

By MR. MCREYNOLDS:

Q. Please state your age, residence, and occupation. A. My age is 54; I am president of The Lehigh Coal and Navigation Company; my home is in Wilkes-Barre, Pa.

Q. How long have you been president of The Lehigh Coal and Navigation Company? A. Since March, 1907.

Q. Is The Lehigh Coal and Navigation Company a Pennsylvania corporation? A. Yes, sir.

Q. Organized under the general or a special act? A. Under a special act.

Q. How many collieries has it? A. Ten.

Q. What system of railroad serves these collieries? A. The New Jersey Central and the Philadelphia and Reading.

Q. Do both of these railroads reach the same collieries in any instance? A. No. The Lehigh Coal and Navigation Company owns the Panther Creek road and delivers to both of these roads.

Q. Where does the Panther Creek road connect with the New Jersey Central? A. At Hauto.

Q. Where does it connect with the Philadelphia and Reading? A. At Tamaqua.

Q. Does the Panther Creek road serve all the collieries of your company? A. All that are operated by the company; yes.

Q. How do you distribute your trade between the two roads, the New Jersey Central and the Philadelphia and Reading? A. We distribute it in accordance with our ability to sell the coal in these different markets.

Q. Do you sell coal in New York? A. Yes, sir.

Q. How do you distribute that tonnage between these two roads? A. That all goes by the New Jersey Central.

Q. Why? A. The shortest and most direct route. It is bound to that road by agreement of lease with the Lehigh and Susquehanna, which also belongs to The Lehigh Coal and Navigation Company.

Q. Are the rates of freight from your collieries over the Philadelphia and Reading Railway Company and the New Jersey Central Railroad Company to tidewater at New York Harbor the same? A. We have no rates by the Reading to tidewater at New York Harbor.

Q. They do not quote you rates at all? A. No, sir; we do not go that way. It would be a roundabout way.

Q. What proportion of the output of The Lehigh Coal and Navigation Company is sent to tidewater at New York? A. I can not answer that. This is a round figure, I do not recall it, but I should say a little more than half of it.

Q. How is it sold in New York? A. Sold by our own agency.

Q. Do you sell any of the coals mined by your company to The Lehigh and Wilkes-Barre Coal Company? A. No, sir.

Q. Do you sell any of the coals mined by your company to any other mining company? A. No, sir. They are all handled by ourselves.

Q. They are all sold through your own selling agency? A. Yes, sir.

Q. Is any railroad company, so far as you are aware, a stockholder in The Lehigh Coal and Navigation Company? A. Not as far as I am aware.

Q. Is any other coal mining company the owner of stock in that company? A. Not as far as I know.

Q. Have you any reason to believe that? A. I have no reason to believe that there is. On the contrary, I believe there is no such ownership.

Q. Do you think your company is owned by individuals? A. I do.

Q. Are the presidents of any of the anthracite coal-carrying railroad companies stockholders in your coal company? A. I could not tell you without looking at the list.

Q. You are not aware of it if they are? A. No; I am not aware of it.

Q. You stated about half of your output came to New York Harbor? A. I think a little more than half; yes, sir.

Q. Speaking generally, where does the rest of your output go? A. It is shipped to various points along the lines between the mines and tide, and some of it goes to New England by rail, and some goes over the Lehigh and Hudson, and some of it goes to Philadelphia, and some of it goes to points on the canal. We own a canal in connection with this property.

Q. Is your company the owner of the shares of any of these anthracite coal-carrying roads? A. No, sir.

Q. Is the same true in reference to the coal companies which themselves are controlled by the railroad? A. I think we have a small stock interest in The Lehigh and Wilkes-Barre Coal Company. Not very much of it.

Q. Have you any business with The Lehigh and Wilkes-Barre Coal Company? A. No.

Q. You neither buy from them nor sell to them? A. No, sir; neither.

Q. How are your prices at which you sell coal at New York Harbor fixed? A. We fix them ourselves.

Q. How? What do you take into consideration? A. We get the very best price we think we can for the coal, just as any other merchant would do.

Q. Do you have information about what other coal companies are going to sell at next month, for instance? A. No; we do not. We would like to have it.

Q You do not know? A. We do not know; no. No one knows exactly There is not any such close union that we can tell what our competitors are going to sell their coal for. I wish there were. I would know better how to handle our own business.

Q. Do you sell at the same price or a different price? A. We sell at the very best price we can get, always.

Q. So do all your competitors, of course? A. I presume so; yes.

Q. Can you get a better price for your coal than your competitors? A. We can for some grades of it, and for some grades we can not get as good.

Q. What are your prices to-day for the prepared sizes; egg, say? A. I will give you the averages for last month if you will give me a little time. I can not give them offhand.

Q. Were they not exactly the same as The Philadelphia and Reading Coal and Iron Company prices? A. I do not know.

Q. Are you not always advised what The Philadelphia and Reading Coal and Iron Company is going to sell theirs at? A. Their average prices; no.

Q. No; not the average prices. What their public prices are? A. No; I am not.

Q. You fix your prices irrespective of them? A. We have a general idea, of course. These prices that we learn of every month, we deal with the same people they deal with. We know the prices at which they offer coal, and we do our best to hold our business on that basis.

Q. Are you not selling coal at exactly the same prices they are to-day? A. No, sir; I tell you we are not. As far as I know, we are selling our coal at the best prices we can get for it and keep our mines running. That is what we are in business for.

Q. You have no standard for your coal? A. No standard beyond that.

Q. Have you no fixed price for your coal? A. Yes, sir; we issue a circular.

Q. When do you issue that circular? A. I do not recollect whether we issue that every month. Yes; I think we issue it every month.

Q. Are not the terms of that circular just exactly the same as the circular issued by The Philadelphia and Reading Coal and Iron Company? A. I can not answer that. I do not know.

Q. Do you not see that circular? A. I have not seen a Philadelphia and Reading circular in six months.

Q. Has not the price of your coal changed in six months, except from month to month so much, 10 cents each month? A. It changes constantly.

Q. What do you mean by that? A. I mean we have no fixed price in a market of this sort. We are occasionally obliged to cut our prices to move our coal. We make a fixed price, but make a discount from that price.

Q. Do you mean to say, then, that you publish one price and sell at another? A. We publish a circular price, as most other people do, from which a discount is allowed, as most people do.

Q. Is that discount uniform? A. No, sir.

Q. You give a different discount to different customers? A. We might do that; yes.

Q. Do you do that? A. Yes, sir; we do.

Q. How much is your maximum discount? A. I can not tell that. It is in the hands of our sales department, and I can not give you those details.

Q. One per cent? A. I tell you I can not give it to you. If I knew it was one per cent. I would have told you.

Q. Is it that much or less than that? A. It depends on circumstances.

Q. You have given him orders as to about how much discount he shall give? A. We tell him to get the best price he can. Sometimes he gets more than the circular price. At other times he gets less, depending on circumstances, depending on how good his credit is, or a dozen other things enter into the merchandise end of it.

Q. Do you change your prices of coal each month after April? A. We change the circular price.

Q. What was your circular price for egg coal last April? A. I can not recollect those figures. I can give you the circular.

Q. Have you not had the same circular prices for your coal for the last three years? A. That I can not answer, but I will produce the circular.

(Mr. McReynolds requested the witness to produce the circulars referred to issued by his company for the last three years.)

Q. Who is your principal competitor in the New York market? A. I do not know that there is any principal competitor. We are competitors of every other of the large interests who ship coal here.

Q. Give us some of them. A. The Lehigh and Wilkes-Barre Coal Company, The Philadelphia and Reading Coal and Iron Company, the Delaware, Lackawanna and Western Railroad Company, the Lehigh Valley Railroad Company, the Ontario and Western Railroad Company, and the Erie. Those are among the principal ones

Q. Do you confer with those people about the prices of coal? A. Not at all.

Q. When did you cease to? A. I have not done it since I have been with the company.

Q. Have the prices of coal been changing in your company since you went there? A. Yes, sir.

Q. Materially? A. Yes, sir.

Q. Raised or lowered? A. Both.

Q. The different sizes? A. At different times different sizes, depending on the market.

Q. You always change your price of coal on the 1st of April, do you not? A. We do; yes. It is good business to try to get these people to take their coal early in the season so that we are not crowded and rushed with coal in the fall.

Q. Each month you advance it ten cents? A. We advance our circular ten cents, yes. We do not necessarily advance the price.

Q. Does your company sell to the trade all the coal it mines? A. No; it sells some to commission houses.

Q. Does your company sell to any railroad company, or to any coal company controlled by any railroad company, any part of its output? A. No.

Q. What is the capital stock of The Lehigh Coal and Navigation Company? A. About $19,000,000.

Q. What is its bonded indebtedness? A. Something over $17,000,000. I do not remember the exact figures.

Q. Is that bonded indebtedness held or controlled by any railroad company, as far as you are aware? A. Not as far as I know.

Q. Do you sell much coal along the line of the New Jersey Central Railroad between your mines and the harbor of New York? A. Yes; we sell all we can find customers for.

Q. How do the prices compare with the prices at tide? A. They are usually higher.

Q. Materially higher? A. I do not know that I could answer that exactly. They are higher.

Q. The lease which you produce, under which the Central of New Jersey operates the Lehigh and Susquehanna Railroad, provides for a payment of a certain percentage of the gross receipts to the lessor. Are settlements made from time to time with the New Jersey Central on that basis? A. You will remember in that lease that arrangement continued until one-third of the rental reached a maximum figure, and it is now settled on that maximum figure.

Q. How long has it been settled on that maximum figure? A. Before my connection with the company. I can not tell how long.

Q. For two years or more? A. Yes; I know for more than two years.

Q. Are the terms of that lease which you have already introduced being carried out and the roads being operated under it to-day? A. Yes.

Q. And have they been since your connection with The Lehigh Coal and Navigation Company? A. Yes.

Q. Are the collieries of your company operated to their capacity throughout the year, and have they been since your connection with it? A. Practically so. There are times during the summer when that is not done, because we can not find the people to buy our coal. Except that they are worked practically full time.

Q. What proportion of the entire production of anthracite does your company put out? A. I think the total production last year was about 67,000,000, as near as I remember, and our production was not quite 3,000,000. That would be about 5 per cent., a little less than 5 per cent.

Q. Do you endeavor to so operate your mines as to produce about that per cent. from month to month of the entire output? A. No, sir; we do not pay any attention to that.

Q. You pay no attention to the output of the other companies? A. We get out all the coal we can find customers for. We would be glad to get out more if we could find them.

Q. Did you ever try the expedient of reducing the price of coal to get customers? A. We can not afford to, because we make very little money now on the anthracite business. The average during the last three years has been less than 5 cents a ton.

Q. You mean operating all your collieries? A. On all sizes of our coal.

Q. Do you sell coal that you get out of the collieries at a high cost of production at the same price as that which you get from the collieries where the operation is cheaper? A. Yes, sir.

Q. Has The Lehigh Coal and Navigation Company ever owned anthracite coal lands in what is known as the "northern region?" A. Yes; at one time they owned lands in the Wyoming Valley.

Q. When were they disposed of and to whom? A. I can not give you the date of that. They were disposed of to The Lehigh and Wilkes-Barre Coal Company at some time, long before my connection with the company. I do not know the circumstances.

Q. I see by your statement of the output and prices that you have furnished here from 1901 down to September, 1908, that the prices vary, they do not seem to be exactly the circular prices even on the prepared sizes, they go up and down, and when we come to steam sizes

there seems to be a greater difference. Can you tell why that is? A. It is the result of competition for trade. We sell our coal at the very best price we can get for it. It depends on how bad the other man wants it what price we have to take.

Q. Do the steam sizes have much to do with the matter of your profit? A. The whole question of cost, figuring the cost of anthracite coal, is a very complicated one, due to the fact that these steam sizes are by-products really in the manufacture of domestic coal, and we sell them for what we can get, and when you figure your profits you really figure on making your profits on the prepared coal.

Q. This Panther Creek Railroad, as I understood you to say, is practically what might be called your gathering railroad? A. Yes.

Q. It is built to the breakers at your collieries? A. Yes.

Q. And it is built to them from time to time as you need to extend it to them? A. I suppose so, as they were developed.

Q. Is that railway to these collieries expensive to build, maintain, and operate? A. Yes, very much so.

Q. Does any other railroad reach your collieries? A. No.

Q. Have you any idea of what the expense is to complete or build a railroad per mile in that country, to collieries in that way, and maintain it? A. I could not give you an average figure; no. It is high, because the country is mountainous and rough, and the grades are steep.

Q. When your colliery is worked out is the railroad then of any use any further? A. No, sir; none at all.

Q. There is no other traffic for the railroad? A. Not in our Panther Creek case.

Q. So that the railway in some fashion must pay for itself during the life of a colliery? A. Yes.

Q. And pay its own cost of operation? A. Yes.

Q. And the colliery's life would run over about how many years? A. I could not give you that. I do not know.

Q. You can not tell about that? A. I do not know.

Q. You spoke of operating your collieries to their capacity if you could get the customers for your coal, and you said you did not put the prices lower because your profit was too small. Does mining and selling coal in that respect differ from any manufacturing enterprise in this, to wit, that whether you run your factory or mine at full capacity or not depends on whether the profit is sufficient, so that you can run it at a profit? A. It is exactly parallel.

Q. The mining proposition is substantially a manufacturing proposition? A. Yes, sir; it is, in that respect.

Q. Only in mining you are using up your capital all the time? A. Yes.

Q. If you do not charge up anything for depreciation or royalty, or anything else, when you get through what have you got? A. You have got the bag.

Q. You have got a hole in the ground? A. You have got a hole in the ground.

Q. In that respect it differs from a manufacturing enterprise, in that they in some fashion get their return as it goes along? A. I should say in that respect.

Q. You have breakers at all these collieries? A. Yes.

Q. They cost about how much apiece? A. Modern breakers cost anywhere from $200,000 to $250,000.

Q. And your collieries themselves, to get your shaft down and get them developed, what does that cost? A. You can not develop a modern colliery much short of $1,000,000, counting breaker and other appliances.

Q. Do you recall what is called the Schuylkill Valley line of the Philadelphia and Reading Railway, extending from Pottsville to Tamaqua, the Schuylkill Valley branch, they call it? A. From Tamaqua to Pottsville?

Q. Yes. A. Straight down the valley?

Q. It does not go straight through to Pottsville, but in that direction. A. Yes.

Q. You recall also the little Schuylkill Valley? A. Running down to Port Clinton, yes.

Q. That is probably the line over which your coal from the Panther Creek region proceeds to Philadelphia, as it

would be the natural water grade line by way of Port Clinton and Reading to Philadelphia? A. That would be the natural line, yes, but the question asked me was whether it went a certain way.

Q. To get to New York it would have to be transferred from some point at or near Philadelphia, over the North Penn and Bound Brook system of the Reading Railway system and the Jersey Central, in order to reach Elizabethport where you tranship your coal? A. If sent by Tamaqua.

Q. By our system? A. Yes, that is the only way to get there.

Q. Would not that be an intolerably roundabout line as against the natural line down the Lehigh and Susquehanna? A. Yes.

Q. The only reason for shipping coal that way would be to reach that line and Philadelphia track delivery? A. That is all the coal we send that way.

Q. That is the only economic reason there would be for sending it that way? A. Yes.

Q. I understand you also reach other track deliveries in Philadelphia by the Belvidere branch from Phillipsburg? A. Yes.

Q. You ship your coal from the mines in connection with the Jersey Central's operation of the Lehigh and Susquehanna to Phillipsburg, N. J., where it is diverted down the river by way of the Belvidere branch of the Pennsylvania Railroad, and then to the track deliveries on the Pennsylvania system in Philadelphia? A. That is right.

Q. You could not reach New York naturally and economically by using either the lines of the Philadelphia and Reading Railway system or the lines of the Pennsylvania Railroad system? A. No; we could not reach New York in that way.

Q. You have a connection to Philadelphia, a physical connection, with the track of the Lehigh and Susquehanna to the North Pennsylvania Railroad track of the Reading leased line, at South Bethlehem? A. Yes; we do send some coal that way.

By MR. REYNOLDS:

Q. Did you succeed Mr. Lathrop as president of the Lehigh Coal and Navigation Company? A. I did; yes, sir.

Q. What time? A. The first of July, 1912.

Q. What had been your previous affiliation? A. With the Lehigh Valley Coal Company.

Q. How long had you been with them? A. I had been with the Lehigh Valley Coal Company, with the exception of five years, since 1890.

Q. In what position? A. As engineer, general superintendent, general manager, and vice-president.

Q. You were a mining engineer? A. Originally I was by profession a mining engineer.

Q. What was your preparation for that profession? A. A technical education at Lehigh University and Amherst College, from both of which I graduated, supplemented by practical experience in the coal, copper and iron mining.

Q. Have you any relations whatever with the Philadelphia and Reading Coal and Iron Company? A. No, sir; I never have.

Q. Or the Lehigh and Wilkes-Barre Coal Company? A. No.

Q. Or the Philadelphia and Reading Railway Company? A. No.

Q. Or the Central Railroad Company of New Jersey? A. No.

Q. From 1890 to 1912 you were then in the practical mining control of the properties of the Lehigh Valley Coal Company? A. I was associated with them, but I was in charge of their coal properties from 1901 to 1912.

Q. Does the Lehigh Valley Coal Company, and did they then have operations in all three of the mining regions, that is, the Wyoming, the Lehigh and the Schuylkill? A. Yes, sir.

Q. You were in charge of their operations in all three of those regions? A. Yes, sir.

Q. So that for those eleven years you were familiar with the mining conditions in all three regions? A. I was.

Q. Since then you have been in charge as president of the Lehigh Coal and Navigation properties? A. Yes, sir.

Q. In what regions have they properties? A. They are operating in the Lehigh and Southern or Schuylkill fields.

Q. So that now you are as well familiar with the Lehigh and Schuylkill fields from a practical, operating, mining engineer standpoint? A. I am; yes, sir.

Q. Is there within your knowledge of these two companies a very considerable discrepancy in the cost of production as between the minimum cost at the most favorably located collieries and the maximum cost at the most unfavorably located collieries? A. There is a very wide fluctuation in the cost between collieries in the various regions, not only in the cost, but in the revenue derived per ton of coal from the product.

Q. Taking an operation in a single region and involving several collieries in that single region, is there a wide margin between the minimum cost of the favorable colliery and the maximum cost of the unfavorable colliery? A. There is a margin; yes, sir.

Q. Contrasting generally the fields, taking the Wyoming field on the one side and the Schuylkill field on the other, in which field is the margin of profit in operation the greater? A. Generally speaking, the margin of profit is very much greater in the Wyoming or Northern field than it is in the Southern or Schuylkill field.

Q. Can you epitomize briefly the conditions which bring that about, geologically and mining? A. In the first place, generally speaking, the revenue per ton of coal mined in the Wyoming field is very much greater than it is in the Southern coal field, due to the more regular condition of the veins, and the more even quality of the coal it produces, and larger percentage of the domestic sizes of coal than is the case in the Southern field. In the second place, as far as mining operations are concerned, the Wyoming coal beds generally lie flat or on a gentle pitch; it is possible to lay out and maintain a given operation with a lesser capital investment, the costs of timbering or development are less, generally speaking, the amount of water to be pumped per

ton of coal mined is less, and the quality of the coal is very much more regular. There is less expense connected with the development work through pinch faults and irregularities of the veins. Then again, a certain amount of development done in that Wyoming field is done sufficiently for the mining of the entire coal, whereas, in the more steeply pitching veins in the Schuylkill field the continual development has to be made and only one or two lifts at a time can be mined, leaving until some future time the mining of the deeper portions of the basin.

Q. Contrasting the broad margin of profit in operation of the Wyoming field with the narrower margin of profit in the Schuylkill field is it a practical engineering condition that as the coal becomes scarce and the price goes up, the Wyoming region will naturally be in a position to mine much more coal than could be estimated as minable with present conditions? A. Over a large part of the Wyoming field estimates generally taken at the present time of minable coal are made on the theory that a certain proportion of the coal, from forty to sixty per cent., as the case may be, will have to be left inside for the support of the surface. As time goes on and the coal becomes scarcer, undoubtedly methods, which are already beginning to be made in that region, such as filling and silting and packing with waste rock, will be more largely adopted, until finally I have no doubt that methods will be in force there similar to the methods now in force in Europe, by which instead of 40 or 50 per cent. of the coal being taken out, possibly 80 or 90 per cent. will be taken out. Possibly all of it. But, that whole question is largely an economic question, and the larger margin of profit in the Wyoming region should in time encourage the operators in that region to gradually adopt methods for mining the larger proportion of the coal than is now generally considered minable.

Q. Will that be natural and normal to very much lengthen the estimated life of the Wyoming region? A. Very much.

Q. Coming to the statement put in by the Government in this case, being a so-called estimate of William Griffith.

published in the "Bond Record" in June of 1896, forming an exhibit of the Government in this case, I want to call your attention to some of the features of that estimate. In the Lehigh region he gives, under the caption of tonnage owned by the Central Railroad of New Jersey, 351,018,900 tons, with an acreage of 9335 acres. With your knowledge of the acreage of your own company, the Lehigh Coal and Navigation Company, and the acreage of the Honey Brook collieries of the Lehigh and Wilkes-Barre Coal Company, is it necessarily true that that acreage includes both companies? A. I would assume that it did cover both companies, the Honey Brook Company and the lands owned by the Lehigh Coal and Navigation Company east of the Little Schuylkill River.

Q. Neither one of the companies alone would furnish that acreage? A. No; probably not.

Q. He gives as the tonnage by contract of the Central Railroad Company of New Jersey an acreage of 1426 acres, and an unmined tonnage of 8,768,600 tons, thus making a total tonnage of both owned and controlled by contract of 359,787,500 tons. That estimate being as of the year 1895. You were present this morning and heard Mr. Huber testify that since 1895 the Lehigh and Wilkes-Barre had mined about half a million tons a year from the Honey Brook collieries? A. Yes, sir.

Q. That would make fully 10,000,000 tons mined out by the Lehigh and Wilkes-Barre since 1895, would it not? A. Yes, sir; about that figure.

Q. Since 1895 about how much tonnage has the Lehigh Coal and Navigation Company mined out from these lands? A. In round figures I should say about 60,000,000 tons.

Q. So that would mean a total of 70,000,000 tons mined out from those 359,000,000 tons in the past twenty years? A. Yes, sir.

Q. If my arithmetic is correct, that would leave in the ground, according to Mr. Griffith's guess, 289,787,500 tons? A. Yes, sir.

Q. Did you read the petition of the United States Government in this case? A. I did; yes, sir.

Q. Are you aware that the Government says in its petition that the Lehigh Coal and Navigation Company alone has at the present time instead of about 289,000,000, 500,000,000 tons of unmined coal? A. Yes, sir; I saw that.

Q. The third paragraph of your answer on page 4, which you signed, admits that allegation, does it not? A. Yes, sir.

Q. I suppose it is fair to assume that either one of these statements or the other must be a little incorrect; that Griffith's estimate of 289,000,000, or the Government's averment of 500,000,000, one of them must be wrong, I suppose? A. That would be the natural assumption.

Q. How much tonnage do you remember was given by Griffith to the Pennsylvania properties in the Lehigh region? A. One million one hundred thousand.

Q. Are they still mining coal in the Lehigh region? A. That is coal that they get by contract entirely.

Q. They did not give that any tonnage? A. None whatever

Q. It was so small, it is negligible anyway, 1,000,000 tons? A. Yes, sir.

Q. The Lehigh Valley tonnage, what comment can you make on that from your knowledge of the property? A. The Lehigh Valley tonnage was given as a total tonnage, tributary to the Lehigh Valley Railroad, and tonnage by contract is given as 93,816,400 tons. The total of tonnage tributary to the Delaware and Susquehanna and Schuylkill Railroad, which was bought by the Lehigh Valley Railroad in 1904 or 1905, was given as 69,901,200, or a total of 163,717,600 tons. I have figured out the total shipped over the Lehigh Valley Railroad since that time from the Lehigh region in the years 1895 to 1913, inclusive, which figures out 76,731,352 tons. Leaving in round figures 89,000,000 tons still left available for shipment, according to Mr. Griffith's estimate.

Q. Is the Lehigh Coal and Navigation Company independent in every way of the Philadelphia and Reading

Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company? A. Absolutely; yes, sir.

Q. Is it controlled or dominated in any way by the Philadelphia and Reading Railway? A. No, sir.

Q. Or the Central Railroad Company of New Jersey? A. No.

Q. Or the Reading Company? A. No, sir.

Q. Or any of the officers of those companies? A. No, sir. In no way whatever.

Q. Do you take any orders or directions from anybody else but your own directors? A. I take no instructions from anybody except the board of directors of the Navigation Company. I am elected by the stockholders of the Navigation Company and represent their interests.

Q. Do you take any advice or consultation or suggestion from any of these other companies? A. In what way do you mean?

Q. In respect to any of your affairs of the Lehigh Coal and Navigation Company in the way you run it? A. No; in no way.

Q. Do you permit any of these other coal companies, like the Lehigh and Wilkes-Barre Coal Company, or the Philadelphia and Reading Coal and Iron Company, or any of these railroads, the Philadelphia and Reading Railway Company or the Central Railroad Company of New Jersey, or the Reading Company, to affect or fix your price at which you sell your coal? A. No; none whatever. We sell our coal for the very best price we can get for it, and at the same time take care of our regular customers who have been customers of the company for years.

Q. What influences you in fixing the price below which you will not sell your coal? A. That we cannot afford to do. The margin of profit for the Navigation Company in its coal operations for the last year was approximately ten cents a ton. We cannot afford to sell our coal at less prices than we do sell it, without suffering a loss.

Q. Why do you not sell your coal at a higher price than that demanded by the other coal companies whose

stocks are owned by the railroads? A. Certain grades of coal, the higher grades of coal that we have we do sell at a higher price. The average grades of coal we do not sell at a higher price, because we have our regular customers to whom we look for help during dull times. We expect them to be our steady, regular customers, and during times of scarcity in coal, we do not consider it good business to exact more from them than we would under normal conditions. We do not consider it good merchandising to do that.

Q. Or to demand more than the other large companies are demanding? A. No; generally speaking, for that same grade of coal we expect to get as good a price as anybody else who is in the business. My instructions to our sales agent are that he shall get just as good a price as anybody else who is merchandising the same grade of coal in competition with him.

Q. Since your connection with the Lehigh Coal and Navigation Company have you gained some familiarity with the canal problem? A. I have.

Q. Do you know of any other canals now operating in the State of Pennsylvania than the canals which you operate and the Schuylkill canal? A. No; I do not, not now operating in the State of Pennsylvania.

Q. In recent years has any effort been made on the part of the Lehigh Coal and Navigation Company to improve the canal situation on your property? A. We have kept, and are now employing a corps of engineers who are especially studying every feature connected with the operation of canals, to see if we can make changes in the methods of operation of the canal which would make it a profitable operation. We have spent considerable sums of money in experiments with electric motors, both on canal boats and on tracks along the tow path, and have also experimented with gas producer tugs of special design for the purpose of hauling canal boats, and have also made very complete studies of different forms of canal boats, to see if we can remedy the present troubles

we have with the operation of the canal. But so far we have not developed anything that is of a very practical nature.

Q. Did you adopt the electric haulage plan? A. We did not; no.

Q. The canal transports a good deal of your Lehigh Coal and Navigation Company coal, does it not? A. About three hundred thousand tons a year; yes, sir.

Q. And, of course, as to that, the amount of the toll you pay is out of one pocket into the other? A. Yes, sir.

Q. So that if it were five dollars or five cents, it would make no ultimate difference to the Lehigh Coal and Navigation Company? A. No.

By Mr. Drinker:

Q. Referring to the canal situation, you saw the statements that I offered in evidence this afternoon, showing the maximum rentals of the Central Railroad of New Jersey for the last thirteen years? A. Yes, sir.

Q. You observed that since 1903 one-third of the gross receipts had exceeded the maximum rental and had still been growing ever since? A. Yes, sir.

Q. You know that under the so-called routing clause in the lease of 1871 the canal traffic is not included? A. Yes, sir.

Q. So that since 1903 if it was to the advantage of the Navigation Company to ship over the canal, there was every inducement for them to do so if they could do it cheaper than by the railroad? A. To largely increase the tonnage shipped by the canal would largely increase the investment, and, with the present equipment we have on the canal, and the uncertainty of transportation due to the interruptions from continuous floods and freshets, we have not considered that we were warranted in making additional investment for canal boats or in enlarging the canal to increase the tonnage. The results of the operations have not been sufficiently encouraging to warrant additional investment.

Q. Are you elected by the board of managers or by the stockholders? A. I am elected by the stockholders.

Cross examination.

By Mr. Kingsbury:

Q. Have you any independent estimate, or have you caused to be made any independent estimate of the amount of minable coal remaining in the lands of the Lehigh Coal and Navigation Company? A. I have never caused any estimate to be made. There was an estimate made, I believe, several years ago.

Q. How long ago? A. That I do not recall. Perhaps five or six years ago.

Q. Prior to your connection with the company? A. Yes, sir; prior to my connection with the company.

Q. Do you know by whom it was made? A. Made by Mr. Cochrane, I think, an engineer of Pottsville.

Q. Employed by the Navigation Company? A. Yes, sir; I believe so.

Q. Do you know what the figures of that estimate were? A. No, I do not, except in round figures, the estimate was in the neighborhood of 500,000,000 tons.

Q. Have you that estimate in the form of a document in the records of the company? A. I could not say as to that. I have never seen it.

Q. Will you look for it and have counsel produce it at a subsequent session if you find it? A. Yes, sir; I will do so.

Q. Do you have the same method of taxation on your lands that has been testified to in regard to the Lehigh and Wilkes-Barre Coal Company lands by Mr. Huber? A. That method of taxation as described by Mr. Huber has only been applied to the Wyoming field. The estimates of tonnage in the Lehigh and Schuylkill fields are necessarily so uncertain that nobody has ever felt that they would be sufficiently accurate even for the purposes of taxation, and, as a result of that, coal lands in those fields have been invariably taxed on the basis of so much per acre, more or less regardless of the amount of coal which is supposed to underlie them.

Q. But that assumes that some coal underlies the land, does it not? A. Yes, sir.

Q. They are taxed as coal lands and not as agricultural or timber lands? A. No; they are taxed as coal lands.

Q. How does your company carry its coal lands on its books; at an estimated value, or at the price you paid for them or in what way? A. You might not say an estimated value. I do not believe I could tell you just on what basis that is.

Q. It is an arbitrary value? A. You might say it is an arbitrary value. They carry it very low on the books.

Q. Do you happen to remember the figures? A. I think if you have the balance sheet of the company it will show. I do not recall. I think on our present balance sheet the coal lands and improvements are lumped together all as one item.

Q. You gave some testimony as to the difference between the maximum and minimum cost of the production of your coal in different collieries. I think you said it was about seventy-five cents a ton? A. I do not recall that I gave any figure.

Q. How much difference is there in the cost of your coal between your maximum cost of production and minimum? A. You mean as applying to the Lehigh Coal and Navigation Company, or applying to the field generally?

Q. Applying to your own company? A. So far as the Lehigh Coal and Navigation Company is concerned, there is very little difference in the cost of its coal.

Q. About how much? A. I should not say on the average there was over fifteen to twenty-five cents a ton difference.

Q. What were your maximum and minimum figures? A. That I do not recall.

Q. Have you no idea? A. I should say the average cost, between the maximum and minimum cost,—it would be a bare sort of an estimate, but I would say that the average cost of mining would be between two dollars and two dollars and twenty-five cents a ton.

Q. That I think you testified leaves a smaller margin of profit than in the Wyoming region? A. Yes, sir. Due to

the fact that the average cost of mining is higher and the average revenue is very much lower.

Q. What is your margin of profit about? A. As I testified, for last year it was in the neighborhood of ten cents a ton.

Q. You also testified in regard to the probability of the introduction in the future of new methods of mining, which would result in making it possible to get out coal which under present conditions is left in the ground? A. I referred before very largely to the Wyoming field in the flat veins.

Q. You have no such expectation in your collieries? A. Our veins are all steep pitching veins, varying up as high as workable.

Q. You have a general familiarity with what this new method would be? A. Yes, sir.

Q. It would be considerably more expensive than the present methods, would it not? A. Yes, sir.

Q. So that when the point is reached, the cost of production in the Wyoming field will more nearly approximate the cost of production in your field? A. I should not want to prophesy as to just what it would be.

Q. That would be the natural inference, would it not? A. That would be a natural inference; yes, sir.

Q. Has your company ever conducted its mining operations at a loss for any considerable period of time? A. That I would not want to say. My acquaintance with the company is of a comparatively recent date. I have been familiar with it only over the last two years, and I would not want to say.

Q. You testified that the figures given in the Griffith estimate indicated that the estimate for the Central Railroad Company of New Jersey coal lands, included the lands of the Lehigh and Wilkes-Barre and also the lands of the Lehigh Coal and Navigation Company? A. Yes, sir.

Q. That is simply a matter of your inference from figures; is it not? A. I think it is not only an inference, but it is a logical deduction. It could not be figured out in any other way. Part of the Lehigh Coal and Navigation

Company's collieries are embraced in the Lehigh region, and part of the Lehigh Coal and Navigation's property is embraced in the Schuylkill region. In other words, the Little Schuylkill River affords an arbitrary line in that field or basin between what is known as the Lehigh region and what is known as the Schuylkill.

Q. In which region is the bulk of your Navigation Coal Company's lands? A. The greater part of the tonnage is in the Lehigh region.

Q. About what proportion? A. I should imagine two-thirds of it. Possibly more.

Q. Has there been any change of policy or method of operation of the Lehigh Coal and Navigation Company since you became president; or, has it continued in its general line of action that it pursued before? A. Its general line of policy as an independent producer of coal has been continued. There has been no change of method, there has been no change of policy.

Q. Just what do you call "independent?" What do you mean by the word "independent" as stated in your testimony? A. I mean that the Lehigh Coal and Navigation Company is an independent corporation in that it is not and does not consult or accede to the wishes either through its executive officers or through its stockholders or through its banking connections with any competitor in the business.

Q. Is it not a fact that you ship somewhere in the neighborhood of three-quarters of your whole output over the Jersey Central? A. We do; yes, sir.

Q. Is not that in pursuance of contract relations with the Jersey Central? A. It is in pursuance of contract relations by virtue of a lease which was made in 1871 by the Lehigh Coal and Navigation Company to the Jersey Central.

Q. So that to the extent of three-quarters of your tonnage, you have not a free choice of where you ship it and how you ship it? A. I think the lease speaks for itself in that particular.

By Mr. Coudert:

Q. You follow the lease? A. We follow the lease; yes sir.

By Mr. Kingsbury:

Q. In your company's reports year after year very frequently your relations with the Jersey Central have been described as "an alliance," have they not? A. I believe I have seen some references or something like that in some of the old reports of the board of managers.

Q. You have seen that phrase? A. Yes, sir.

Q. Have you any other special relations with the Jersey Central in addition to the lease and contract in connection with it? A. Not that I know of of any special moment.

Q. Are you associated with the Jersey Central in the ownership of any interests? A. We have a small interest in I think 500 shares in the Lehigh and Wilkes-Barre Coal Company, and I think the Jersey Central Railroad, and a small ownership in the stock of the Alliance Coal Mining Company which you might call one of the subsidiary companies of the Lehigh Coal and Navigation Company.

Q. You have a large interest, have you not, in the Lehigh and Hudson River Railroad Company? A. Yes, sir; we have a large interest.

Q. But the Jersey Central has a subsidiary interest in that? A. They have a smaller interest than we have in it; yes, sir.

Q. But together you have the majority, have you not? A. I never figured it out that way. We never worked in concert to make it necessary to figure it in that way.

Q. You never consulted with any representative of the Jersey Central about the Lehigh and Hudson in any way?

A. I am a member of the board of directors of the Lehigh and Hudson. We have consulted for the benefit of the Lehigh and Hudson River Railroad at the directors' meetings, not outside of that. Never.

Q. Are there some directors of the Lehigh and Hudson who are regarded as representing the interest of the Jersey Central in that board? A. I think there are, yes, sir.

Q. Who? A. Mr. George F. Baer.

Q. Any one else? A. Mr. DeForest is a member. Who are the members? Mr. Stotesbury is a member. I do not know that I recall anybody else, except Mr. Stotesbury, Mr.

Baer and Mr. DeForest. There might be one or two more there.

Q. Your company entered into an agreement with the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company under date of February 1st, 1892, did it not? A. I do not know.

Q. As the chief officer of your company do you know of the present existence of such an agreement? A. Under date of what?

Q. February 1st, 1892. A. No; I do not recall an agreement of that date at the present time. What does it refer to, may I ask?

Q. There it is. (Agreement shown witness.) A. Yes, sir; I have read that agreement.

Q. That is still in existence? A. Yes, sir; it is still in existence.

Q. You are living up to the terms of that agreement? A. So far there has been no litigation over it in any way.

Q. Or no disagreement about it? A. I would not say that there has not been any disagreement. I said there had not been any litigation.

Q. Is there any controversy over it at the present time that you know of? A. No; not at the present time. There has been controversy over it, which up to the present time has not been settled.

Q. So that to the present time the following provision is in effect, "The true intent and meaning of this agreement being to continue the policy heretofore pursued by the parties hereto as evidenced by existing agreements, and to cement their interests indissolubly so that they may mutually protect and defend each other, and may successfully resist any effort to sever them." A. That reads more like a Fourth of July oration than a statement of the mode of operation.

Q. It is there and you recognize it as still binding your company? A. The agreement speaks for itself.

Q. Who fixes the prices at which your coal is sold? Do you do so personally? A. No; I do not. In any case of a large contract where our sales department are in

doubt as to the policy to be pursued they consult me, but, in the first instance, and in all ordinary and routine matters, the prices are fixed by the head of our sales department.

Q. But under your general supervision and direction? A. Under my general supervision and direction.

Q. And with your approval? A. Yes, sir.

Q. Your company's counsel furnished a statement which was put in evidence, in which it was stated, "The price demanded by the company," that is the Navigation Company "for its product is necessarily regulated by the price fixed in the circulars of the Philadelphia and Reading Coal and Iron Company and of the Lehigh Valley Coal Sales Company, which circulars are printed and distributed to the public." You do not take the position that your counsel has made ~~and which he has filed as~~ a statement on behalf of your company, do you? A. No; I do not.

Q. That statement is true? A. It is necessarily true. We cannot expect to sell a product, which is no better than our competitor's product, at a price that is higher than they receive for it in the same market. We do endeavor to, but our prices are necessarily regulated by what our competitors get for their coal.

Q. Have you sold any substantial amount of your coal at any lower price than the Philadelphia and Reading Coal and Iron Company? A. I should hope not.

Q. You would not do so consciously or willingly? A. No, sir.

By Mr. Coudert:

Q. You would not do so willingly, and you could not do so? A. We could not do so.

By Mr. Kingsbury:

Q. Why could you not do so? A. Because if we sold the coal at less than it cost us to mine, we would lose money.

Q. You are selling as near the cost of mining as you can shave it? A. We are selling at as far above the cost of mining as we can with a due regard for our cus-

tomers who realize that we are continuing in trade indefinitely, and with whom we want to continue on good terms and relations. We get for it the very best price we can get for it.

By Mr. Coudert:

Q. Then you could not sell higher than the Reading, and you would not sell lower? That is the situation, is it not? A. No. I am speaking on the average.

Q. On the average you could not sell higher and you would not sell lower? A. On the average for the same grade of coal we could not sell higher than the Reading do. If our sales department is not as good a sales department as the Reading sales department, they probably would not be able to get as high an average price for the Wyoming. But, we believe that they are as capable as the other sales departments, and we believe that on the average they get just as good a price as our competitors get. In other words, we have to regulate our merchandising business by the prices which are secured by our large competitors. We are comparatively a small company in the puddle, and we cannot hope to get more than the other persons do. We do hope to get just as good a price as they get.

Q. So that it is a perfectly fair statement is it not, based on what your company has already put in and what you have said yourself, that you could not sell for more and that you will not sell for less? A. I will not put it as bald as that. We have got our mines to run, and so long as we can sell coal at a profit and keep our mines going, where otherwise we would have to shut them up, we will do it. It is regulated entirely by how we can make the best profit out of the business, and at the same time, take care of the legitimate rights of our regular trade and customers.

Q. And as matter of fact, you do not sell higher than the Reading? A. Certain grades of coal we do. We have certain special grades of coal that command quite a premium.

Q. Aside from those specials you have spoken of, you

do not and cannot sell —— A. No; I do not think we do.

Q. And you are unwilling to sell lower? A. If we can get as good a price as the Reading do, we try to get it.

Q. As matter of fact, your company relies for its principal net revenue on the rental which it derives from the Lehigh and Susquehanna Railroad rather than the profit that it makes from its mining of coal, does it not? A. Yes, sir; the largest element of profit for the Lehigh Coal and Navigation Company is the rental of the Lehigh and Susquehanna Railroad.

Q. Your company also owns substantially all the stock of the Lehigh and New England, does it not? A. Yes, sir.

Q. Do you derive any substantial net revenue from that investment? A. We derived a small net revenue from it last year, which was the initial dividend declared by the Lehigh and New England.

Q. And you derive some revenue from your investment in the Lehigh and Hudson? A. Yes, sir. We have for the last two years, I think it is, received a dividend of four to five per cent.

Q. Can you state approximately what proportion of your net revenue is derived from your coal operations, or is that impossible for you to answer? A. I think our net revenue was about fifteen per cent. from coal operations.

Q. The rest in transportation in one form or the other? A. Yes, sir.

Q. Do you derive any revenue from other shippers than yourselves on your canal? A. No. Outside of some merchandise shippers, raw stone and something of that kind.

Q. Have you a substantial amount of shipments on your canal other than your own coal? A. No; not substantial.

Q. Do you carry any other coal on the canal besides your own coal? A. We do not.

Q. Simply your own? A. Yes, sir.

Q. Where does that coal go to—what market? A. It

goes to the Philadelphia market mostly, and along the line of the canal.

Re-direct examination.

By Mr. Reynolds:

Q. In the Lehigh region, Mr. Griffith put in the acreage of the C. R. R. Company of New Jersey owned as 9335 acres. Would it be possible, with the small acreage of the Honey Brook fields of the Wilkes-Barre to make up that 9000 acres in that field without including the Lehigh Coal and Navigation Company? A. No, sir. I think Mr. Griffith treated the property of the Lehigh Coal and Navigation Company as property owned by the Central Railroad of New Jersey.

Q. Are the Lehigh Coal and Navigation Company operations in the Lehigh region in one compact body or locality and geologically very homogeneous? A. They are. They are all contiguous to each other.

Q. So that there would be, in the nature of things, a very small difference between the maximum and minimum cost of production of coal? A. That is true.

Q. Going back to your recollection of the Lehigh Valley, how large a margin between the maximum cost of production and the minimum cost of production did you use to have there between your collieries? A. Anywhere from a dollar to as high as a dollar and a half a ton difference in the cost of production.

Q. As a practical question, have you seen the agreement of February 1st, 1892, between the Central Railroad and the Lehigh Coal and Navigation Company before during your incumbency as president? A. I believe I did see it once somewhere, but I never paid any attention to it.

Q. Has any practical question ever come before you in connection with it? A. No.

Q. Has any practical enforcement of the contract in any form been insisted upon as between the coal companies? A. No.

By Mr. Kingsbury:

Q. It is so well understood that you do not think to dis-

cuss it, is that it? A. It is not understood at all. The agreement has never been what we would consider a live agreement under which we were working.

By MR. REYNOLDS:

Q. It is a dead letter? A. Practically speaking it is a dead letter.

(Adjourned until Friday, April 17th, 1914, at eleven o'clock A. M.)

PHILADELPHIA, PA., Friday, April 17th, 1914,
11 o'clock A. M.

Present—The Examiner, Messrs. Coudert, Kingsbury and Gordon, Special Assistants to the United States Attorney General, for the Government; Messrs. Reynolds, Heebner, Turner, Beitler and Drinker, for the defendants.

(Mr. Reynolds offered in evidence Act incorporating the Laurel Run Improvement Company, being a certified copy of Act of General Assembly of the Commonwealth of Pennsylvania, approved May 8th, 1871, as follows):—

"No. 817.

"AN ACT

"To incorporate the Laurel Run Improvement Company.

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly* met, and it is hereby enacted by the authority of the same, That John W. Lott, J. M. Hodge, E. J. Jones, O. H. Torbert, G. F. Rohrer, and their associates, and such other persons as may become holders of the stock of said company, are hereby created a body politic in law and in deed, by the name, style and title of the Laurel Run Improvement Company, and as such shall have perpetual succession, and all the powers, privileges, franchises and immunities of a corporation.

"SECTION 2. That the capital stock of said company shall consist of twenty thousand shares, of the par value of fifty dollars per share, and the president and directors shall have power from time to time to issue such an additional amount of stock as they may deem necessary to carry out the objects of the corporation or may issue the bonds of said company, bearing such rates of interest, not exceeding eight per centum per annum, and payable at such times as they may designate, or may issue both said stock and bonds, and dispose of either, or both of the same, at such price and in such way and manner as they may deem expedient; and shall have power to secure the principal and interest of said bonds by a mortgage or mortgages upon the whole or any parts of their property real or personal, and their corporate rights and franchises acquired or to be acquired by said company.

"SECTION 3. The said corporation shall have power to purchase, sell, transport and mine coal, and to mine and manufacture iron, and for this purpose the said company shall have power to acquire from time to time by purchase, lease or otherwise, such lands as they may deem expedient, and may lease, sell, mortgage or otherwise dispose of such land or any rights, easements or privileges therein; and may construct all necessary buildings and fixtures necessary for the business of mining, and for preparing coal for market, mining and manufacturing iron, and the accommodation of persons engaged in their employ in the said business.

"SECTION 4. That the corporators, or a majority of them, named in the first section of this Act, over their joint signatures, shall prepare a certificate, setting forth that they have elected a president and six directors of said company, and the powers and duties of said corporation shall thereupon finally cease and determine; and said certificate, when deposited in the archives of said company, shall be evidence of the election of the president and directors named; and such president and six directors shall adopt a form of subscription for stock, and when not less than five thousand shares shall have been

subscribed for, and not less than five dollars per share shall have been paid in, a meeting of the stockholders shall be called, at a time and place to be designated in a written or printed notice, to be served upon each stockholder, either personally or by mailing the same to his place of residence; and at the said meeting, or some adjournment thereof, the stockholders present, either in person or by proxy, shall have power, by a majority of votes, to elect a new president and new board of six directors, or to continue the old president and the old board; and shall adopt such by-laws, fixing the terms of office, qualifications, and election of president and directors, the time and place of holding an annual meeting of the stockholders, and election of president and six directors, the convening of special meetings of stockholders, the calling in and enforcing by suit, forfeiture or otherwise, of payment of stock subscription, and such other matters connected with the business of the said company as they may deem advisable; which said by laws may be amended, altered or repealed by a majority of votes, at any general or special meeting of the stockholders; and at all corporate meetings or elections, for and purpose whatsoever, each share of stock shall entitle the holder to one vote.

"SECTION 5. The stockholders, at their annual meeting, or at some adjourned meeting, shall elect a president and six directors, who shall serve for the ensuing year, and until their successors are elected; and any vacancy in the office of president or directors shall be filled by the remaining directors, or president and directors, as the case may be; any four of the presidents and directors, for the time being, shall constitute a quorum, and shall be subject to the by-laws adopted by the stockholders, exercise all the corporate powers which the corporation may at any time lawfully exercise, including the power of appointing all such officers, agents or employees as they may deem necessary, and may from time to time adopt, repeal, alter or amend the by-laws for regulating the business of the company, not inconsistent with those adopted

by the stockholders; and it shall be lawful for the president and directors of said company to subscribe for or purchase the lands or stock of any other incorporated company in the State of Pennsylvania, and for any railroad or mining company existing under the laws of this State to subscribe for or purchase the stock, or to purchase or guarantee the bonds of the company hereby incorporated. This corporation shall pay into the treasury of the commonwealth a bonus of one-fourth of one per centum on the capital stock hereby authorized, or hereafter created, in four equal annual instalments, and such taxes on dividends as is or may be provided by law; and the stockholders of said company shall be individually liable for all debts due mechanics, workmen and laborers employed by said company, and for all materials and provisions furnished to said company to be sued for and collected as is provided in the twelfth thirteenth and fourteenth sections of the act incorporating the Lackawanna Coal and Iron Company, approved the fifth day of April, one thousand eight hundred and fifty-three.

JAMES H. WEBB,
"Speaker of the House of Representatives.
"WILLIAM A. WALLACE,
"Speaker of the Senate.

"Approved the eighteenth day of May, Anno Domini one thousand eight hundred and seventy-one.
"JNO. W. GEARY.

"OFFICE OF THE SECRETARY OF THE
"COMMONWEALTH OF PENNSYLVANIA.

"HARRISBURG, Feb. 2, 1914.

"PENNSYLVANIA, *ss.*

"I DO HEREBY CERTIFY, That the foregoing and annexed is a full, true and correct copy of an act of the general assembly of this commonwealth entitled 'An Act to incorporate the Laurel Run Improvement Company:' ap-

proved May 18, 1871; as the same appears of record and remains on file in this office.

"*In Testimony Whereof*, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed, the day and year above written.

"WM. HERTZLER,

[SEAL] "*Deputy Secretary of the Commonwealth.*"

Mr. Reynolds also offered in evidence certified copy of the proceedings under which the name of the Laurel Run Improvement Company was changed to the Philadelphia and Reading Coal and Iron Company, as follows:—

"IN THE COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF PHILADELPHIA.

"*In the matter of the petition of the Laurel Run Improvement Company for a change of its corporate name to The Philadelphia and Reading Coal and Iron Company.*

"AND NOW, December 12th, 1871, it appearing to the court that the within petition was filed in the office of the prothonotary of this court, and that notice thereof was inserted in one newspaper printed in the County of Philadelphia, for at least three weeks, as directed by the order made by this court on the fifteenth day of November, 1871, and no reason being shown to the contrary. It is decreed and declared that the prayer of the said petition be granted, and that the name, style, and title of 'The Laurel Run Improvement Company' be changed to 'The Philadelphia and Reading Coal and Iron Company,' and that the said petition and the orders thereon be recorded in the office for the recording of deeds in this county.

"E. M. P.

I HEREBY CERTIFY the foregoing to be a true and correct copy of the decree made on the twelfth day of December, A. D. 1871, in the matter of the petition of 'The Laurel Run Improvement Company' for a change of its corporate name to 'The Philadelphia and Reading Coal and Iron Company.'

"*In Testimony Whereof*, I have hereunto set my hand, and affixed the seal of said Court, this fifteenth day of December, A. D. 1871.

"J. A. LOUGHBRIDGE,
"Pro. C. C. P."

[SEAL]

"AUDITOR GENERAL'S OFFICE.

"HARRISBURG PA., February 2nd, A. D. 1914.

"I DO HEREBY CERTIFY that the foregoing is a full and true copy of the original remaining on file in this office.

"Witness my hand and seal of office, the day and year aforesaid.

"A. W. POWELL,
"Auditor General."

"Per WM. BINGHAMKAY,
"Chief Clerk."

[SEAL]

W. G. BROWN having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your position, and with what company? A. I am secretary of the Philadelphia and Reading Coal and Iron Company.

Q. Have you any connection with the Lehigh and Wilkes-Barre Coal Company? A. None whatever.

Q. The Central Railroad Company of New Jersey? A. No, sir.

Q. Or the Philadelphia and Reading Railway Company? A. No, sir.

Q. Or the Reading Company? A. No, sir.

Q. Or the Lehigh and New England Railroad Company? A. No, sir.

Q. Or the Lehigh and Hudson River Railroad Company? A. No, sir.

Q. Or the Lehigh Coal and Navigation Company? A. No, sir.

Q. Does your company act independently in the purchase of its materials? A. Entirely so.

Q. And pays for your materials from its own funds? A. Yes, sir.

Q. Does it pay railroad fares of its employees. A. Yes, sir.

Q. On all railroads? A. On all railroads.

Q. Does it pay the regular printed tariff rates on its coal? A. Yes, sir; the regular published tariff.

Q. How are your men paid, and by whom? A. By our own paymaster.

Q. Do you keep your own bank accounts? A. Yes, sir.

Q. And your own books and accounts A. Yes, sir.

Q. At what prices do you sell coal to the Philadelphia and Reading Railway Company? A. At the same prices as we sell to our other customers.

Q. At my request have you prepared a statement showing the investments in your western yards and depots from your general balance sheet of January 31st, 1914? A. Yes, sir.

Q. Will you please put that in the record?

The witness produced the following statement:—

WESTERN YARDS AND DEPOTS.

From General Balance Sheet, January 31st, 1914.

	Real Estate	Improvements	Total
Canal Street, Chicago	59,995.32	5,000.00	64,995.32
Division Street, Chicago	57,000.00	2,500.00	59,500.00
95th St., & South Chicago Dock	100,000.00	80,617.41	180,617.41
Irving Avenue, Chicago		28,641.88	28,641.88

	Real Estate	Improvements	Total
New Coal Dock, Superior	20,129.62	820,961.85	841,091.47
Old Coal Dock, Superior		54,209.49	54,209.49
Retail Yard, Superior	5,000.00	326.29	5,326.29
Canal Street, Milwaukee	197,305.88	130,347.17	327,653.05
Yard #2, Minneapolis	32,611.90		32,611.90
Yard #3, Minneapolis	14,969.55	8,284.44	23,253.99
Yard #4, Minneapolis	11,002.70	28,854.03	39,856.73
Yard #1, Minneapolis		4,471.12	4,471.12
Yard #1, St. Paul		2,500.00	2,500.00
Yard #2, St. Paul		2,500.00	2,500.00
Yard #3, St. Paul		6,262.00	6,262.00
Atlantic Avenue, Rochester		37,603.21	37,603.21
Lyoll Avenue, Rochester	18,000.00	7,327.03	25,327.03
Central Transfer, Lyons, N. Y.		46,541.39	46,541.39
Totals.....	516,014.97	1,266,947.31	1,782,962.28

PHILADELPHIA, February 21st, 1914.

Q. Is the Railway Company a large purchaser of coal from the Philadelphia and Reading Coal and Iron Company? A. Yes, sir.

Q. Both bituminous coal and anthracite coal? A. We sell some bituminous coal. They purchase all their anthracite coal from us.

Q. What price by general description do they pay? A. The regular current prices.

Q. Since when has the Philadelphia and Reading Coal and Iron Company been the lessee of the lands of the Tremont Coal Company, the Preston Coal and Improvement Company, the Delaware Coal Company, and the Mammoth Vein Coal Company? A. Since 1876.

Q. And of the Locust Gap Improvement Company? A. Since 1888.

Q. Is it also, and has it been in possession of the lands of the Fulton Coal Company for a period since 1885? A. Yes, sir.

Q. What rate of interest does your company pay on commercial loans from the Reading Company? A. Four per cent.

Q. About how much anthracite coal are you purchasing normally in the ordinary and usual course of business from other producers? A. At present we are only purchasing from two, the Enterprise Coal Company and the Pine Hill Coal Company, about fifteen to seventeen thousand tons a month, I think.

Q. At my requets did you prepare a statement of the operations of the Philadelphia and Reading Coal and Iron Company for the fiscal years 1898 to 1913 inclusive? A. Yes, sir.

Q. Is that statement in your hand the one you prepared? A. Yes, sir.

Q. Will you please put it in the record?

(The witness produced the following statement):—

THE PHILADELPHIA AND READING COAL AND IRON CO.

COMPARATIVE STATEMENT OF OPERATIONS FOR THE FISCAL YEARS 1898 TO 1913 INCLUSIVE.

Year Ended June 30	Production			Sold Tons	Cost Per Ton Mined by Company	Cost Per Ton Mined and Purchased	Cost Per Ton of Coal Sold	Receipts Per Ton	Profit of the Coal Department		Miscellaneous Receipts		Total Profit in Operating	
	Mined Tons	Purchased Tons	Total Tons						Average Per Ton	Amount	Average Per Ton	Amount	Average Per Ton	Amount
1898	6,681,600.19	1,082,403.10	7,764,004.09	7,706,169.07	$1.80.3	$1.78.6	$1.79.8	$1.85.5	$.05.7	$440,172.31	$.00.5	$36,066.18	$0.06.2	$476,238.49
1899	7,156,734.00	1,195,381.15	8,352,115.15	8,303,344.14	1.58.7	1.58.9	1.60.8	1.71.3	.10.5	870,791.05	.00.4	30,943.89	.10.9	901,734.94
1900	8,031,951.01	1,125,467.00	9,157,418.01	9,379,427.08	1.67	1.66.7	1.66.5	1.85.5	.19	1,787,930.00	.01.8	164,137.01	.20.8	1,952,067.01
1901	8,016,935.18	967,434.11	8,984,370.09	9,100,516.02	1.82.6	1.82.3	1.85	2.08.7	.23.7	2,151,933.03	.00.7	72,333.76	.24.4	2,224,266.79
1902	6,968,566.03	1,034,290.02	8,002,856.05	8,289,828.07	2.06.6	2.02.8	2.00.1	2.16.8	.16.7	1,386,405.13	.01.4	112,803.38	.18.1	1,499,208.51
1903	6,299,449.04	1,008,252.08	7,307,701.12	6,842,537.02	2.19.9	2.18.8	2.24.5	2.66.2	.41.7	2,851,723.34	.03.2	219,049.53	.44.9	3,070,772.87
1904	8,707,508.02	1,388,534.17	10,096,042.19	9,758,139.14	2.22.6	2.22.9	2.25	2.54.6	.29.6	2,885,203.79	.03.9	383,965.29	.33.5	3,269,169.08
1905	9,438,665.17	1,184,349.11	10,623,015.08	10,312,223.12	2.19.2	2.20.2	2.24.4	2.44.9	.20.5	2,110,077.28	.02.1	222,416.89	.22.6	2,332,494.17
1906	9,132,353.14	1,024,050.17	11,156,404.11	10,275,605.00	2.18.6	2.19.1	2.12.3	2.30.4	.18.1	1,857,874.68	.01.6	171,691.56	.19.7	2,029,566.24
1907	10,034,713.02	1,107,848.07	11,142,561.09	10,492,511.15	2.16.8	2.17.6	2.16.4	2.33.5	.17.1	1,959,093.84	.01.4	167,472.36	.18.5	2,126,566.20
1908	10,218,392.05	1,083,681.19	11,302,074.04	10,992,975.16	2.14.6	2.16.1	2.14.7	2.35.7	.21	2,313,766.50	.01.0	109,840.74	.22	2,423,607.24
1909	9,283,961.03	955,620.09	10,239,581.12	10,076,210.03	2.24	2.23.7	2.22.2	2.36.6	.14.4	1,458,534.79	.01.2	116,086.12	.15.6	1,574,620.91
1910	8,842,595.15	786,796.04	9,629,391.19	9,564,216.14	2.30.8	2.30.9	2.31.1	2.42.6	.11.5	1,105,830.39	.01.1	101,312.52	.12.6	1,207,142.91
1911	9,025,614.03	828,666.17	9,854,281.00	10,094,466.14	2.31.9	2.31.7	2 31.5	2 34.8	03.3	333,672 13	.00.8	83,848 82	.04.1	417,520.95
1912	8,671,013.00	641,272.00	9,312,285.00	10,194,690.02	2.39.3	2.40.2	2.34.3	2 45.6	.11.3	1,154.528.60	.00.3	33,413.66	.11	1,121,114.94
1913	11,089,742.16	524,574.05	11,614,317.01	10,748,603.00	2.35.1	2.35.7	2.39.1	2.73.5	.34.4	3,695,555.20	.00.8	91,363.14	.35.2	3,786,918.34
Total....	137,599,797.02	15,938,624.12	153,538,421.14	153,131,465.10	.....	.....	.....	.....	$0.18	$28,363,092.06	.....	$2,049,917.53	.....	$30,413.009.59
Average.	8,599,987.06	996,164.01	9,596,151.07	9,570,716.12	$2.12.5	$2.12	$2.11.9	$2.30.4	$0.18.5	$1,772,693.25	$0.01.4	$128,119.85	$0.19.9	$1,900,813.10

Philadelphia, February 8th, 1914.

Q. Did you at my request also prepare a statement showing the tonnage annually mined, purchased, and marketed by the Philadelphia and Reading Coal and Iron Company for the calendar years from January 1st, 1896, to December 31st, 1913? A. Yes, sir.

Q. Will you kindly put that statement in evidence?

(The witness produced the following statement):—

PHILADELPHIA AND READING COAL AND IRON CO.

TONNAGE ANNUALLY MINED, PURCHASED AND MARKETED FROM JANUARY 1, 1896, TO DECEMBER 31, 1913.

Calendar Year	Tonnage Mined			Tonnage Purchased			Total Mined and Purchased	Total Tons Marketed
	From Lands Owned by the P. & R. C. & I. Co.	On Royalty From Leased Lands	Total	Mined From Lands of P. & R. C. & I. Co.	Mined From Lands of Others	Total		
1896	5,546,676.12	1,573,430.10	7,120,107.02	537,932.17	407,140.04	945,073.01	8,065,180.03	7,777 348.05
1897	5,010,241.09	1,414,801.13	6,425,043.02	628 555.14	435,515.14	1,064,071.08	7,489,114.10	7,496,750.09
1898	4,980,119.04	1,410,762.02	6,390,881.06	617,251.14	445,596.10	1,062,848.04	7,453,729.10	7.639,406.15
1899	6,173,114.03	1,570,396.13	7,743,510.16	674 647.01	542,949.06	1,217,596.07	8,961,107.03	9,405,033.05
1900	5,929,600.11	1,299,642.02	7,229,242.13	652,768.13	294,438.07	947,207.00	8,176,449.13	8,393,017.11
1901	7,097,567.16	1,297,891.04	8,395,459.00	789,385.01	320,180.19	1,109,566.00	9,505,025.00	9,352,617.16
1902	3,920,305.02	607,982.15	4,528,287.17	560,712.03	84,257.05	650,969.08	5,179,257.05	5,428,364.08
1903	7,455,191.12	1,448,863.12	8,904,055.04	1,258,591.00	248,723.18	1,507,314.18	10,411,370.02	9,341,765.09
1904	7,352,532.05	1,632,731.06	8,985,263.11	1,021,512.08	226,903.18	1,248,416.06	10,233,679.17	10,194,048.02
1905	8,073,674.08	1,905,318.17	9,978,993.05	909,740.03	294,375.02	1,204,115.05	11,183,108.10	10,893,835.15
1906	7,130,448.03	1,788,721.05	8,919,169.08	677,060.07	283,907.04	960,967.11	9,880,136.19	10,264,005.16
1907	8,606,759.15	2,324,585.12	10,931,345.07	914,065.17	259,289.14	1,173,355.11	12,104,700.18	12,253,980.17
1908	7,439,451.60	1,861,213.01	9,300,664.01	770,742.02	260,911.07	1,031,653.09	10,332,317.10	9,795,894.16
1909	7,000,462.03	1,707,541.10	8,708,003.13	549,526.08	230,735.15	780,262.03	9,488,265.16	9,673,268.13
1910	7,227,440.09	1,570,152.07	8,797,592.16	611,310.07	234,933.07	846,243.14	9,643,836.10	9,962,013.09
1911	8,112,994.09	1,455,655.17	9,568,650.06	530,395.01	246,851.00	777,246.01	10,345,896.07	10,312,418.11
1912	8,267,046.02	1,389,384.18	9,656,431.00	431,673.05	206,731.19	638,405.04	10,294,836.04	10,961,637.10
1913	8,349,103.14	1,602,417.19	9,951,521.13	187,267.02	79,527.00	266,794.02	10,218,315.15	9,115,715.09
Total.....	123,672,728.17	27,861,493.03	151,534,222.00	12,329,137.03	5,102,968.09	17,432,105.12	168,966,327.12	168,261,122.16

PHILADELPHIA, February 26, 1914.

Q. The last statement is prepared, as I understand, on the basis of the calendar year which is the coal sales year? A. Yes, sir.

Q. And the previous statement, which involves the financial affairs of the company as well, is prepared on the basis of the fiscal years, ending June 30th? A. Yes, sir.

Q. Did you also at my request prepare a statement showing from 1896 to date the tonnage, and its proportion to the total tonnage marketed by the Philadelphia and Reading Coal and Iron Company, distributed annually by the Philadelphia and Reading Coal and Iron Company from New York Harbor? A. Yes, sir.

Q. Will you please put that statement on the record?

(The witness produced the following statement):—

The Philadelphia and Reading Coal and Iron Company Exhibit showing from 1896 to date the tonnage (and its proportion to the total tonnage marketed by Philadelphia and Reading Coal and Iron Company) distributed annually by The Philadelphia and Reading Coal and Iron Company from New York Harbor.

NEW YORK HARBOR.

Calendar Years	Tons Sold	Per Cent. of Total Sales	Total Number of Tons Sold at all Points
1896.....	1,052.958	13.54	7,777.348
1897.....	1,044.552	13.93	7,496.750
1898.....	1,073.744	14.06	7,639.406
1899.....	1,273.038	13.54	9,405.033
1900.....	911.296	10.86	8,393.017
1901.....	1,015.701	10.86	9,352.617
1902.....	467.432	08.61	5,428.364
1903.....	936.212	10.02	9,341.765
1904.....	1,450.582	14.23	10,194.048
1905.....	1,471.048	13.50	10,893.836
1906.....	1,256.397	12.24	10,264,005
1907.....	1,761.242	14.37	12,253.989
1908.....	1,316.621	13.44	9,795.894

1909.....	1,297,279	13.41	9,673,268
1910.....	1,243,302	12.48	9,962,013
1911.....	1,288,991	12.50	10,312,418
1912.....	1,616,943	14.75	10,961,638
1913.....	1,015,059	11.14	9,115,715
Total.....	21,492,397	12.77	168,261,115

Philadelphia, January 26th, 1914.

Q. Did you also at my request prepare a statement showing the States in which the Philadelphia and Reading Coal and Iron Company distributed anthracite coal for the year ending December 31st, 1913? A. Yes, sir.

Q. Will you please put that statement on record?

(The witness produced the following statement):—

The Philadelphia and Reading Coal and Iron Company distribution of Anthracite Coal Year ended December 31st, 1913.

Maine,
New Hampshire,
Vermont,
Massachusetts,
Rhode Island,
Connecticut,
New York,
New Jersey,
Pennsylvania,
Delaware,
Maryland,
District of Columbia,
Virginia,
West Virginia,
Georgia,
North Carolina,
South Carolina,
Alabama,
Mississippi,
Florida,

Louisiana,
Texas,
Tennessee,
Kentucky,
Ohio,
Indiana,
Illinois,
Michigan,
Wisconsin,
Minnesota,
North Dakota,
South Dakota,
Montana,
Washington,
Wyoming,
Colorado,
Missouri,
Kansas,
Arkansas,
Nebraska,
Oklahoma,
Iowa,
California,
Canada,
Cuba,
Bermuda.

Philadelphia, April 17th, 1914.

Q. Did you at my request collaborate with Mr. W. C. Johnson, Comptroller of the Lehigh and Wilkes-Barre Coal Company, in a joint statement of the tonnage of anthracite coal marketed at competitive points by the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company respectively during the year ending December 31st, 1913? A. Yes, sir.

Q. Are you the authority for the column showing distribution of the Philadelphia and Reading Coal and Iron Company on that statement? A. Yes, sir.

Q. I assume that there is a great variety in this distribution of tonnage from year to year? A. Yes, sir; it varies every year. That is a normal year.

Statement marked "Defendant's Exhibit No. 12, as follows:—

DEFENDANT'S EXHIBIT No. 12.

Tonnage of Anthracite Coal Marketed at Competitive Points by the Lehigh and Wilkes-Barre Coal Company and The Philadelphia and Reading Coal and Iron Company, respectively, during year ending December 31st, 1913.

TIDE WATER POINTS.

Name.	L. & W. B. Coal Co.	P. & R. C. & I. Co.
Boothbay Harbor and East Boothbay, Maine.	3,800	156
Ellsworth, Maine.	129	1,555
Portland, Maine.	14,537	164,996
Rockland, Maine.	512	9,400
Total.	18,978	176,107
Portsmouth, New Hampshire.	2,982	71,520
Total.	2,982	71,520
Beverly, Massachusetts.	954	7,510
Boston, Massachusetts.	111,956	357,319
Cambridgeport, Massachusetts. . .	11,719	5,733
Danversport, Massachussetts.	1,252	3,604
Dorchester, Massachusetts.	2,667	8,580
East Braintree, Massachusetts. . . .	3,842	5,888
Fall River, Massachusetts.	5,889	39,710
Gloucester, Massachusetts.	4,388	22,392
Lynn, Massachusetts.	13,981	53,038
Marblehead, Massachusetts.	1,011	9,713

Marion, Massachusetts.	1,282	579
Nantucket, Massachusetts.	336	400
New Bedford, Massachusetts. . . .	2,943	39,294
Newburyport, Massachusetts. . . .	13,340	20,305
Provincetown, Massachusetts. . . .	293	1,820
Quincy Point, Massachusetts. . . .	11,961	13,378
Somerville, Massachusetts.	1,963	7,779
Taunton, Massachusetts.	1,884	916
Total.	191,661	597,958
Bristol, Rhode Island	1,276	7,737
Newport, Rhode Island.	21,125	16,893
Pawtucket, Rhode Island.	2,694	6,006
Providence, Rhode Island.	38,043	28,628
Westerly, Rhode Island.	5,248	2,147
Total.	68,386	61,411
Bridgeport, Connecticut.	616	28,393
Hartford, Connecticut.	4,011	32,049
Middletown, Connecticut.	1,646	608
New Haven, Connecticut.	4,144	26,159
Norwich, Connecticut.	6,616	7,098
Norwalk, Connecticut.	5,836	817
Riverside, Connecticut.	88	123
Shelton, Connecticut.	906	9,934
Total.	23,863	105,181
Brooklyn, New York.	304,885	297,782
City Island, New York.	1,148	855
Coney Island, New York.	5,225	396
Long Island, New York.	81,003	31,256
New York, New York.	446,201	347,816
New Rochelle, New York.	5,127	15,416
Peekskill, New York.	4,068	914
Pt. Chester, New York.	3,471	738
Rockaway Beach, New York. . . .	1,815	8,588

Staten Island, New York.....	25,872	4,979
West Chester, New York.....	10,320	3,025
West Farms, New York.....	855	1,089
Yonkers, New York.....	4,332	1,829
Total.....	894,322	714,683
Newark, New Jersey.....	3,203	699
New Brunswick, Foreign.....	14,523	5,094
Quebec, Foreign.....	7,982	154
Total.....	22,505	5,248
Total Tide points.....	1,225,900	1,732,807

EASTERN DEPOTS.

Belmont, New Hampshire.....	16	120
Concord, New Hampshire.....	65	1,074
Derry, New Hampshire.....	229	164
Nashua, New Hampshire.....	399	372
Plaistow, New Hampshire.....	24	237
Salem Depot, New Hampshire....	113	309
Sundry Towns, New Hampshire..	106	479
Total.....	952	2,745
Lyndonville, Vermont.....	16	92
Wells River, Vermont.....	171	197
Total.....	187	289
Amesbury, Massachusetts.....	46	1,191
Andover, Massachusetts.....	183	2,265
Bradford, Massachusetts.....	135	1,494
Boston, Massachusetts.....	13,261	1,259
Danvers, Massachusetts.....	527	189

Gloucester, Massachusetts.	111	497
Haverhill, Massachusetts.	65	19,578
Ipswich, Massachusetts.	2,082	1,670
Lawrence, Massachusetts.	22,579	13,807
Lowell, Massachusetts.	309	11,743
Methuen, Massachusetts.....	1,006	990
Marblehead, Massachusetts.	42	299
No. Andover, Massachusetts.....	1,381	298
Rowley, Massachusetts.	55	489
Reading, Massachusetts.	22	1,283
Revere, Massachusetts.	41	446
Salem, Massachusetts.	35,366	881
Swampscott, Massachusetts.	45	222
Topsfield, Massachusetts.	1,144	102
Wakefield, Massachusetts.	499	2,150
Waltham, Massachusetts.	20	1,606
Waverly, Massachusetts.	221	1,369
Woburn, Massachusetts.	21	1,579
Total.	79,161	65,407
Total Eastern Depots.....	80,300	68,441

VIA RAIL.

BOSTON AND MAINE R. R.

Massachusetts.

Arlington Heights.	87	337
Waltham.	74	385
Winchendon.	423	854
	584	1,476

CENTRAL VERMONT RAILROAD.

Vermont.

Montpelier.....	423	499

RUTLAND RAILROAD.

New York.

New Lebanon	244	40

BOSTON AND ALBANY RAILROAD.

Massachusetts.

Adams	2,074	1,309
Athol	1,743	382
Barre	35	372
Brighton	627	4,762
Brookfield	994	183
Brookline	131	192
Cambridge	879	298
Dalton	2,328	281
Gilbertville	276	999
Holliston	1,343	81
Indian Orchard	2,068	303
Mittineague	146	504
Newton Centre	7,242	1,366
Newton Lower Falls	1,820	681
Newton Upper Falls	2,220	419
West Newton	705	4,220
Palmer	929	39
Richmond Furnace	90	48
Spencer	2,064	205
Turners Falls	493	30
Ware	675	861
Warren	2,188	192
Wellesley	5,282	1,446
	36,360	19,173

NEW YORK.

Canaan	121	118
Claverack	28	71
	149	189

N. Y. N. H. & HARTFORD RAILROAD.

Massachusetts.

Attleboro. . .	5,767	2,730
Ashland. . .	1,934	99
Armory. . .	9,983	1,852
Abington. . .	321	1,610
Blackstone. . .	1,171	536
Braintree. . .	216	2,226
Bridgewater. . .	1,533	149
Brockton . . .	1,910	9,159
Boston. . .	3,093	1,722
Campello. . .	3,948	3,075
Chatham. . .	72	1,785
Canton Junction. . .	27	810
Clinton. . .	715	622
Cohasset. . .	1,212	518
Congamond. . .	28	57
Deerfield. . .	26	276
Duxbury. . .	1,108	66
East Hampton. . .	687	1,115
Framingham. . .	476	1,240
Franklin. . .	2,520	135
Fairmount. . .	6,243	399
Fall River. . .	182	1,771
Fitchburg. . .	6,030	1,526
Foxboro. . .	1,598	560
Forest Hills. . .	2,978	2,135
Florence. . .	1,630	1,316
Gt. Barrington. . .	2,129	1,281
Grafton. . .	2,567	36
Hatfield . . .	550	530
Haydenville. . .	261	22
Hingham. . .	183	503
Holyoke. . .	2,180	4,685
Hopkinton. . .	113	165
Housatonic. . .	638	110
Hopedale. . .	4,137	59
Lenox. . .	2,791	86

Lenoxdale	4,521	791
Lee	1,482	80
Leominster	5,211	1,789
Lowell	39,335	647
Long Meadow	147	107
Marlboro	1,906	579
Mansfield	2,347	309
Medway	289	212
Medfield	275	181
Middleboro	2,960	953
Melford	2,612	438
Montello	982	4,085
Mellville	701	75
Needham	1,071	268
Northampton	5,332	498
Norwood	6,978	1,934
Northboro	1,706	43
Northbridge	36	37
Orleans	87	614
Oxford	758	163
Pittsfield	28,868	4,876
Provincetown	150	1,718
Quincy	1,084	2,489
Quincy Adams	280	1,582
Randolph	697	1,527
Readville	10,312	1,256
Rockland	1,146	5,822
Roxbury	773	489
Sharon Heights	67	120
Springfield	15,510	13,034
Sheffield	161	498
Shelburne Falls	196	28
South Denis	28	202
Stockbridge	127	940
Southboro	99	422
Southbridge	1,460	581
Stoughton	3,911	2,256
Sudbury	27	38
Uxbridge	486	37

Walpole	912	168
Webster	1,675	704
Westfield	7,408	2,922
Weymouth	1,186	3,807
Williamsburg	77	59
Whitman	1,273	3,571
Worcester	34,621	12,044
	262,227	120,019

Connecticut.

Ansonia	421	854
Bantam	23	322
Berlin	200	361
Bristol	4,874	1,352
Brookfield	27	279
Bolton	29	142
Canaan	272	607
Chestnut Hill	156	28
Central Village	449	50
Cheshire	45	76
Clinton	25	28
Danielson	2,178	837
Danbury	3,849	1,304
East Lynne	38	322
East River	64	29
Elmwood	25	96
East Windsor Hills	84	59
Farmington	872	428
Fairfield	114	57
Granby	71	114
Greenwich	1,115	86
Hartford	11,071	21,593
Hazardville	665	154
Litchfield	1,432	111
Manchester	2,280	8,374
Meriden	4,954	3,850
Mt. Carmel	163	104

Middlefield	794	63
Milford	270	225
Mooscup	53	192
New Britain	4,973	7,807
New Canaan	6,069	519
New Hartford	87	94
New Milford	410	132
Naugatuck	309	108
Norwich	666	361
Noroton	68	66
Norfolk	239	174
Norwalk	227	808
New Haven	4,337	1,146
Orange	134	58
Plainville	462	986
Plantsville	1,428	784
Plainfield	208	78
Putnam	3,877	341
Quinnebaug	270	156
Ridgefield	129	1,842
Riverside	138	43
Rocky Hill	162	110
Rockville	1,236	2,872
Stanford	253	29
Shelton	37	356
Seymour	1,061	447
Simsbury	323	1,009
Sound Beach	1,859	427
Southport	547	164
Southington	344	808
Suffield	142	110
Tompsonville	2,372	534
Thomaston	1,198	493
Torrington	3,926	5,227
Unionville	546	1,294
Waterbury	8,696	11,390
Waterville	794	1,210
Wallingford	4,381	769
Washington	151	592

Warehouse Point.	45	441
Watertown	402	419
Westport.	39	28
Windsor.	809	632
Winsted	2,529	517
Willimantic.	3,122	460
Windsor Locks	624	293
Yatesville.	1,271	257
	97,513	88,488

New York.

Name.	L. & W. B. Coal Co.	P. & R. C. & I. Co.
Harrison	132	260
Larchmont Manor	178	847
Mamoroneck	363	200
New Rochelle.	2,412	2,416
Pelham Manor	85	27
Pt. Chester.	263	71
Poughkeepsie	9,850	292
Rye.	693	575
Valhalla	532	1,229
	14,508	5,917

Rhode Island.

Name.	L. & W. B. Coal Co.	P. & R. C. & I. Co.
Harrisonville.	84	72
Lonsdale	985	749
Olneyville	8,023	3,974
Providence.	3,458	757
Valley Falls	987	382
Westerly.	37	85
Wickford	27	106
Woonsocket.	4,965	4,304
	18,566	10,429

NEW YORK CENTRAL AND HUDSON RIVER RAILWAY.

New York.

Name.	L. & W. B. Coal Co.	P. & R. C. & I. Co.
Ardsley	1,533	753
Brewster	189	1,828
Bronxville	111	28
Carmel	942	1,291
Croton Falls	645	29
Dover Plains	49	58
Fordham	124	454
Hawthorne	266	70
Irvington	139	171
Katonah	885	30
Millerton	38	27
Mt. Kisco	2,956	28
Mt. Vernon	14,786	373
Pleasantville	4,891	142
Spuyten Duyvil	333	378
Tarrytown	134	139
White Plains	794	1,397
Williams Bridge	1,164	720
Woodlawn	3,386	3,302
	33,365	11,218

RHODE ISLAND RAILROAD.

Rhode Island.

Wakefield	219	707

STATEN ISLAND RAPID TRANSIT RAILWAY.

New York.

Dongan Mills	37	3,490
Elm Park	340	760
Grassomere	302	876
Great Kills	96	26
Mariner's Harbor	396	1,479
New Dorp	75	1,210
Pleasant Plains	1,532	608
Princess Bay	792	29
Pt. Ivory	231	410
Pt. Richmond	81	328
Thompsonville	37	27
Tottenville	452	3,245
	4,371	12,497

CENTRAL R. R. OF NEW ENGLAND.

Connecticut.

Bloomfield	85	270
Collinsville	994	2,048
Salisbury	146	50
Tariffville	593	29
	1,818	2,397

New York.

Pine Plains	349	161
Red Hook	886	1,313
	1,235	1,474

PENNSYLVANIA RAILROAD.

Princeton	545	2,322

CANADA EAST (RAIL)

Quebec.

Ottawa	4,740	3,848
Angus Shops	326	1,048
Joliette	29	935
Montreal	818	10,201
Mile End	444	4,958
St. Henri	232	741
Westmont	69	1,129
	6,658	22,860

P. & R. SYSTEM.

Glenside, Pa.	1,990	5,358
Camden, N. J. L. & W. B. via Penna. R. R.	5,017	7,611
Atlantic City, N. J. via Penna R. R.	3,549	27,284
Hopewell, N. J.	72	1,612
	10,628	41,865

N. Y. AND LONG BRANCH DIV. C. R. R.

Asbury Park	16,013	4,337
Belmar	3,047	1,642
Little Silver	672	1,014
Long Branch	13,045	458
Red Bank	1,929	1,817
Spring Lake	935	892
Bay Way	4,558	99,199
	40,199	109,359
Total via Rail	529,612	450,929

SUMMARY.

Tide Points	1,225,900	1,732,807
Eastern Depots	80,300	68,441
Via Rail	529,612	450,929
Grand Total	1,835,812	2,252,177

Cross examination.

By MR. KINGSBURY:

Q. In what manner does the Philadelphia and Reading Railway Company pay the Coal Company for the coal which you sell to the Railway Company? A. Settle in account each month—monthly settlements.

Q. That is, there are cross charges? A. Yes, sir.

Q. You pay the Railway Company for freight? A. For tolls, and deduct the coal bills they have, or any other bills. We settle the books.

Q. Which way is the balance usually? A. In favor of the Railway Company.

Q. That is, you are always paying the Railway Company? A. Yes, sir. Our freight and tolls, of course, is the largest item.

Q. And these balances are struck monthly? A. They are struck monthly.

Q. And settlement made monthly? A. Settlement made monthly; yes, sir.

Q. That is to say, at a given day in each month the balance is struck, and, as you say, there is always a balance in favor of the Railway Company? A. Yes, sir.

Q. Do you pay that immediately to the Railway Company? A. We generally take thirty to sixty days probably. At present we have paid everything we owe up to March. Of course, it takes thirty days probably to get the accounts in shape.

Q. Mr. Baer is president of the Coal Company, is he not? A. Yes, sir.

Q. Is he active in its direction? A. In what way?

Q. In any way? A. He is president, and has charge of everything.

Q. And he does actively direct your operations? A. Yes, sir.

Q. Does the Coal Company pay any dividends? A. No, sir.

Q. Has it ever paid a dividend that you know of? A. Never.

Q. I notice from the comparative statement of operations for the years 1898 to 1913, inclusive, you show in each year a profit in operating. What is done with that profit? A. That is the profit applicable to our fixed charges, our interest.

Q. Is it sufficient in every year to pay your fixed charges? A. It pays the interest on our bonds and also an amount to the Reading Company.

Q. What for? A. Interest on our book account, seventy-two million.

Q. Is that amount being gradually reduced, or does it continue about the same, or is it being gradually increased? A. It continues about the same. It is being gradually reduced, if anything, but very little reduction.

Q. But very little reduction in these years, 1908 to 1913? A. Yes, sir.

Q. In the statement which you have put in evidence showing the amount of tonnage distributed annually by your company from New York harbor I see that the average percentage so distributed is between twelve and thirteen per cent. Is that the largest per centage distributd by your company in any one market? A. I do not understand what you mean by "any one market"?

Q. For example, you show for the year 1913, 11.14 per cent. of your whole amount marketed as having been distributed from New York harbor. Is there any other single point of distribution at which you distribute an equally large percentage? A. We distribute along the line of the railroad company.

Q. I ask you any one single point of distribution? Is there any other one as large in proportion as New York harbor? A. Not that I can remember; no. No.

Q. How about Philadelphia? A. The total coal distributed from Philadelphia for the calendar year ending December 31st, 1913, was 2,287,983 tons, or 25.1 per

cent. of the total, 9,115,715 tons marketed by the Philadelphia and Reading Coal and Iron Company.

Q. Aside from New York and Philadelphia, there is no one distributing point that is anywhere near as large an amount is there? A. I do not think there is; no.

Q. Do you happen to know approximately how much unmined tonnage your company now owns or controls? A. No, sir.

Q. Do you know whether your company has in its record anywhere any estimate of such unmined tonnage? A. Not in this office, or anywheres else that I know of. I would refer that to the operating department. That is outside of my jurisdiction entirely.

Q. Explain just what this means in your statement of cost of operation? You state in one column "Cost per ton mined by the company," and in another column, "Cost per ton mined and purchased," and then, "Cost per ton of coal sold." What do you mean by "Cost per ton of coal sold" as distinguished from "Cost of coal mined," and "Cost of coal mined and purchased"? A. In no year do we sell all of our production. Sometimes we sell more than our production, and, in other years we sell less than our production, so the value of our coal added to our stock unsold, or taken from our stock and sold is taken from or added to the cost per ton in order to find the cost of the coal we sell.

Q. That is to say that the cost per ton of coal is based not only on the cost of that particular year, but may also include as a factor the cost of coal mined or purchased in a preceding year? A. Yes, sir.

Q. But not sold until the year in question? A. Yes, sir; that is the fact. That is the only way we can find the profit accruing each year.

By Mr. Reynolds:

Q. Does it also include the selling cost? A. Yes, sir. All the expenses in connection with it.

By Mr. Kingsbury:

Q. Can you explain this: Between 1912 and 1913 there seems to have been a decrease of some four to five cents a ton both in the cost of coal mined and the cost of coal purchased, but an increase of about the same amount on

cost of coal sold? A. I can give you a memorandum of that. There is the basis for last year. Included in our receipts are probably the higher priced coals.

Q. I was not asking about the receipts. I was asking about the cost of coal sold. I do not understand that. I want to know if you can explain both what it means and how that result was reached? A. On the statement is the value of our coal sold. The coal we added to stock was lower price coal or smaller size, pea, buckwheat and rice. The larger price sold included in our receipts are shown. So that the coal that is left behind and added to our stock was the lower price coal, which increased the cost.

Q. That is, you carried over to the following year a considerable amount of your lower price coal? A. Yes, sir.

(The witness produced the following statement as part of his answer to this question):—

THE PHILADELPHIA AND READING COAL AND IRON COMPANY STATEMENT OF BUSINESS FOR THE YEAR ENDED JUNE 30TH, 1913.

	Tons.	Amount.	Ave. Per Ton.
Cost of coal mined	11,089,743	26,071,916.71	2.351
Cost of coal purchased.	524,574	1,308,665.45	2.495
Total mined and purchased	11,614,317	27,380,582.16	2.357
Less value of coal to stock.	865,714	1,676,544.93	1.937
Net receipts from coal sold.	10,748,603	29,399,592.43	2.735
Cost of coal sold	10,748,603	25,704,037.23	2.391
Profit of coal department.		3,695,555.20	.344
Miscellaneous Receipts.		91,363.14	.008
Profit in operating		3,786,918.34	.352

Philadelphia, April 1st, 1914.

Q. How do you explain the fact that your average profit in operation in 1913 was more than nearly three times the profit in the year 1912? A. Our cost is materially reduced by the large quantity of coal mined. If our collieries were capable of running every day to their full capacity in mining our regular portion of tonnage, our cost per ton would be very materially reduced.

Q. Another contributing factor was that you received some twenty-five cents a ton more than you did the preceding year? A. Yes, sir. Our sales are better.

Q. That means not greater in amount, but that you got a much higher average price, does it not? A. Yes, sir.

Q. Is it a fact that there was sometime in 1912 or 1913 an increase of about twenty-five cents per ton in the wholesale price of your coal? A. I do not remember whether there was or not. I could tell by our circulars.

Q. Will you ascertain that and add that to your answer? A. I will do so.

The witness furnished the following in answer to this question:—

Increase in price on June 1912 Circular on Line and City Trade.

Stove coal	25 cents
Chestnut coal	15 cents
Pea coal	50 cents

On shipments from Port Richmond, Philadelphia, and from New York Harbor.

Broken, Egg, Stove and Chestnut coal an Increase of 25 cents per ton.

Q. At the same time there was an actual decrease in the average cost per ton of your coal in 1913? A. Yes, sir.

By Mr. Reynolds:

Q. I understand you to say, the average cost per ton would naturally go down, in your judgment, with the increased production? A. Yes, sir.

Q. Would the average price realized be very greatly influenced by the higher proportion of prepared sizes sold in any given period? A. Yes, sir.

By Mr. Kingsbury:

Q. In fixing this figure of average cost per ton of coal mined by the company just what factors are taken into consideration? Do you know that, or is that simply prepared for you? A. I know the cost of labor and materials, the expense of selling the article, and every expense in connection with the business and operations of the company.

Q. That is to say, you took all the expenses of the production and divided that by the number of tons of coal you mined, and the result is the average cost per ton? A. Yes, sir. The total tons divided into the total cost.

By Mr. Reynolds:

Q. The suspension in 1912 was in April and May, was it not? A. Yes, sir.

Q. It lasted until the 25th of May, did it not? A. I think it did; yes, sir.

Q. Had you accumulated temporarily a large proportion of small sizes prior to that time in storage? A. I could not say.

W. J. Richards, having been duly sworn, was examined as follows:—

By Mr. Reynolds:

Q. What is your position, and with what company? A. I am the general manager of the Philadelphia and Reading Coal and Iron Company.

Q. Are you also vice-president? A. Yes, sir.

Q. You testified in the old Reading suit, did you not? A. Yes, sir.

Mr. Reynolds:—At this point I offer in evidence excerpts from Mr. Richard's testimony in the old suit, April 20th, 1909.

Testimony of William J. Richards, a witness called by the defendants in the old suit, April 28th, 1909. (Volume IV, page 682.)

WILLIAM J. RICHARDS, a witness called on behalf of the Philadelphia and Reading Coal and Iron Company, having been duly sworn, was examined and testified as follows:—

By JUDGE CAMPBELL:

Q. What is your profession? A. Mining engineer.

Q. Kindly give a brief general outline of your experience as a mining engineer. A. I went with the Reading Coal and Iron Company in their engineering department in 1882. I remained with them in that department until 1887. I was then one year with the Susquehanna Coal Company at Shamokin. In 1888 I returned to the Reading Coal and Iron Company and was with them until 1889 at Ashland, Schuylkill County. Then I went with the Lehigh and Wilkes-Barre Coal Company as mining engineer, and was with them until 1898 as mining and chief engineer. In 1898 I was made general superintendent of the Lehigh and Wilkes-Barre Coal Company, and held that position until 1903. In 1903 I became general manager of the Philadelphia and Reading Coal and Iron Company in charge of the mining department. In 1904 I was made second vice-president, and in 1907 I was made first vice-president of the Reading Coal and Iron Company.

Q. In charge in each instance of the mining department? A. Yes, sir; of the mining.

Q. Kindly give a brief general description of the several anthracite fields which have come under your observation and their special characteristics. A. I made a statement covering briefly my ideas on that. Shall I read that?

Q. I will ask you a few preliminary questions. I wish to call your attention to that Ruley map, which has been offered in evidence. You are familiar with it? A. Yes, sir.

Q. I understand this map to have been prepared under the direction of the Geological Survey? A. The Pennsylvania State Geological Survey.

Q. The nomenclature describing the various divisions differs somewhat from our trade names, does it not? A. Yes, sir. Generally under the Geological Survey the fields are known as the Northern, Eastern and Western Middle, and Southern, whereas we know it generally in the trade as the Wyoming, the Lehigh and the Schuylkill.

Q. The Wyoming Field, I take it, includes the Northern Field, so-called? A. The Wyoming includes the Northern Field.

Q. Which is in Luzerne and Lackawanna counties? A. Luzerne and Lackawanna counties.

Q. The Lehigh Field, as you know it in the trade, consists of what? A. The Lehigh Field consists of the territory adjacent to Hazleton.

Q. Apparently in the middle on the face of the map? A. Yes, sir. It is composed of a number of small basins there, and generally the eastern end of the extreme Southern Field is classified with the Lehigh Region.

Q. That part lying east of the Little Schuylkill River, I take it, the Panther Creek Region, and so forth? A. Yes, sir.

Q. Which is an extension of the Schuylkill Field? A. Yes, sir.

Q. I mean geographically, not geologically altogether. A. Yes.

Q. The regions in the northern part of Schuylkill county extending northwestward to Northumberland shown on this map are marked on the map as the "Western Middle" and "Eastern Middle?" A. Yes, sir.

Q. Now you may proceed, if you please, to place in the record such parts of the statement you say you have prepared as will express your understanding, possibly subject to some interruption to inquire for elaboration and detail. A. I have some remarks on the different fields. Do you want me to read that?

Q. Yes. I just simply wanted you to explain the differ-

ence of the terminology employed by the different witnesses. A. The region producing anthracite coal has a total area of about four hundred and eighty-four square miles. It is divided geologically and geographically into three fields. The first is known as the Northern or Wyoming Field. The Wyoming is a basin about sixty miles long and about six miles wide at its greatest distance across. The principal companies operating within it are the Delaware, Lackawanna and Western, Delaware and Hudson, Pennsylvania Coal Company, Lehigh and Wilkes-Barre Coal Company, Lehigh Valley and the Ontario and Western. Here the coal at the deepest point in the basin reaches a distance of two thousand three hundred feet below the surface. The second field or sub-division is the Lehigh. It is made up of a number of small basins of not very great depth. The measures are of varying inclinations, running from nearly flat to very steep pitches. The third field or sub-division is called the Southern or Schuylkill. The Schuylkill starts near Mauch Chunk on the east.

Q. That is on the Lehigh River? A. Yes, sir. The Schuylkill starts near Mauch Chunk on the east and is very much in the shape of the letter "A," with Mauch Chunk at the apex and Treverton and Lykens at the end of either leg. The Southern Field contains the greatest variety of coal, greater probably than all the other fields combined. It is from this field that the Lykens coals come. That coal is produced on the western end of the Schuylkill Field and is a coal that is not bright but dull in lustre, and is a product of the veins lying geologically lowest in the whole series. That is, this Lykens coal is produced from those veins that are the lowest in the series. In what we call the Lykens region there are four veins producing this coal. The Lorberry, Schuylkill Red Ash, Free and Hard White Ash, Locust Mountain, Shamokin and Franklin coals are all produced in this region.

Q. Now, if you please, go on and describe the various processes of opening mines, the obstacles to be overcome and the purposes to be accomplished. A. The first study

in preparation for the opening of a mine is the geology of the territory and the tract. In the bituminous fields of the eastern portions of the United States the coal lies horizontal, or nearly so. The veins are almost uniform as to texture, contents and quality; that is, a vein fairly proven can be depended upon to continue for reasonable distances to be of similar inclination, quality and thickness. In the anthracite field it is entirely different. Especially is it true of the Southern Field. The veins run from horizontal to vertical. I will just state that the remarks that I am making now are applying particularly to the Southern Field. In some cases the same vein in a comparative limited territory will have all these pitches; that is, starting at the horizontal, it passes on to the vertical. In thickness we have veins from one foot to fifty feet and over. At this time no veins one foot thick are being mined. The lower limit of profitable mining on a pitch where coal will run to the loading point is about three feet, while in flat workings, where the car must be taken to the working face, a profitable business cannot be one on much less than four feet. In vein contents we have the same range from veins that contain but few impurities to veins that contain a large proportion of refuse.

It can be readily understood that with the geological conditions described the production of seventy million tons of coal per year requires the most constant activity on the part of the producer to keep openings ahead sufficient to produce and supply the needs of the market. Seventy million tons annually mean the exhaustion of seventy thousand foot acres of coal per year. It means the shipment of nearly three million railroad cars.

To open up a well-equipped colliery will require almost five years of time and cost nearly or quite a million dollars. All this must be expended before a dollar of return can be expected.

To provide for this great output and to continue to provide for the future business the whole anthracite region is being constantly studied. Territory not fully explored is being searched over by the geologist and engineer. The

area containing anthracite is fully known and its boundaries have been definitely determined.

Within this known area, however, are many tracts that have not been fully developed, and many of the veins in areas of considerable extent especially in the Schuylkill region, have yet to be proven. The changeable character of many of these veins makes them a workable and desirable quantity in one locality, but absolutely worthless in other places, due either to a thinning of the veins or to a change in the texture, whereby rock or other worthless material crushes out the coal. The variableness of the veins is what makes the great commercial risk in mining, which is greater vastly than in the bituminous mining, or than offers in any other line of production. All this doubt and changeability means expense to the producer.

Development.

The first problem is the development of the property. Before undertaking the work, investigations are made sufficient to determine the presence of coal of such quality and thickness as the experience of the operator leads him to believe will provide a tonnage in such quantities as will make the venture a reasonable one. The operator understands that he is dealing with veins that may close or that the hidden dangers inherent in the coal may bring disaster at any time. In most cases the best obtainable data can be but a guess of what the mining is actually to meet.

Veins that looked well at the outcrop or in the provings may have a changed appearance to the operator when fully opened by the gangways or after the product is exposed to the criticisms of a hard market.

In the Schuylkill Field we have a shaft sunk, and are mining coal at a depth of over eighteen hundred feet, and comparatively little coal is now left for the opening of new collieries or the making of new operations that will be secured at a less depth than one thousand feet.

The continuance of mining, exhausting, as is being done

the deposits by seventy million tons each year, will require that the deeper coals must be relied upon more and more, thus adding to the problems of roof support and protection of the passages. Heavier timbers, steel or masonry, will be required to provide for the safety of the employees and the mine. The greater depth finds greater quantities of gas given off, requiring larger quantities of air to dilute the gas and render the mine fit and safe for the workmen. There are mines now supplied with half a million cubic feet of air per minute to keep the passages safe and properly ventilated. As we go deeper in the earth, the veins are generally found to be more disturbed by the greater convulsions that took place when the coal and its encrusting materials were created.

Mining.

The operator having opened the coal now meets the problem of how best to make it workable; how to mine it with the greatest safety to his employees, and for the largest possible return for the investment already made in the project, as well as for the best production for the market. In these days of "conservation of resources" the operator is required to be mindful of the fact that he is taking from the ground something that cannot be reproduced, and that the ton of coal once mined is gone forever.

If the veins are fairly thick and free from refuse the operator has clear sailing. Thin veins or very thick veins, or veins containing considerable refuse introduces severe conditions requiring other methods. Most frequently the operator meets the constantly-changing conditions. A deadly enemy is the mine gas, always ready to take advantage of any mistakes on the part of the workmen. It is constantly dreaded, watched and must be provided against. Again, we have veins that are free and veins that are of solid texture. The treatment in each case must be that best suited for the particular condition.

Transportation.

As the mine grows in extent the transportation of the product becomes a great problem. Formerly, and still largely used, is the mine mule as a source of motive power. But the demands of the times and the economic laws of the age require other surer and cheaper power, so he is now giving way to the electric and compressed air locomotive. To make air available the locomotives using that power have a capacity of storing it at a pressure exceeding, in some cases, one thousand pounds, so that it may be carried in the smallest bulk. The perfecting of electricity has been a great help to our transportation. In gaseous mines electricity cannot be used extensively because of the danger of ignition from it. The immensity of the transportation in our mines can best be made apparent when it is considered for a moment that the coal traffic, which apparently taxes the capacity of our great railroads with their great engines and their cars, originates in the mines, where it is transported through narrow passages, over narrow-guage tracks, in small cars, averaging not over two and one-half tons each and by mules or locomotives that appear like toys when compared to the monster locomotives of the surface railroads.

Pumping.

The extension of the workings and their connection with the surface and hidden springs brings into the mine vast quantities of water, which must be kept constantly pumped to the surface so as to free the mine. For no instant can it be neglected. The pumps must always be ready for continuous operation. There are periods of "heavy water" when every resource is strained; when the production of coal is suspended and all the steam generating capacity of the colliery and all the pumps must operate on water alone. In times past collieries were abandoned because of inability to cope with the

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water in the mine. Of recent years pumps of greater power and capacity and of high efficiency are being installed, with the result that the water problem is being better handled.

At the mines of our company we are to-day pumping five hundred thousand tons of water, or nearly twelve tons of water for every ton of coal produced. The average lift is about seven hundred and fifty feet. This great problem can be appreciated when single pumps are now installed that have a capacity to lift three thousand gallons one thousand feet in height in a minute of time. Formerly steam pipes entered the mines through the slopes or shafts, but now separate bore holes are drilled into the mines that the steam may be taken into the mine with greater economy and safety.

Maintenance.

As the gangways and passages of the mine extend, the maintenance becomes a most serious problem. Iron and masonry are being used for supports where practicable, but great dependence must still be placed on timber and wooden construction for the support of the sides and roof of the passage and traveling ways. There is a bending and elasticity about wooden beams that make them desirable material for use in mines where squeezing is liable to occur. The increasing cost of all wood products is a matter that all are familiar with.

For several years we have been carrying on a series of experiments to determine the lasting qualities of timber treated artificially with creosote, zinc chloride, or salt. Our experiments have progressed far enough to satisfy us that it is a good thing to do. We have just completed a plant to do this work on a large scale. By this means we hope to break the force, in some measure, of an item of expense that is growing rapidly, due to the higher price of the article, as well as its greater consumption, due to the deeper mining.

PREPARATION.

The veins of coal as they were created in the earth are interstratified with layers of bone and slate. In the mining every effort is made to remove the impurities. To supplement this, great buildings called breakers are a part of the equipment of every mine. The product coming from the mine is dumped into the breaker, where it is put through a rigid system of examination, cleaning and screening, with the end that all objectionable matter may be eliminated, and that each particle of coal may be placed in the class to which its size entitles it. At times certain of the larger sizes cannot be marketed At such periods the large coals are broken by rolls into the smaller and, for the time being, salable sizes.

The demand for so many sizes is another great tax on the producer, as in the course of preparation a great deal of breakage and wastage occurs. The sizes that must bear the burden of cost are what are known as prepared sizes. Anthracite coal is now being prepared in twelve sizes, the steam coals being up to this time regarded as a by-product and being sold for less than cost.

The market demanding extreme preparation can work great loss to the producer and will result in limiting the output and ultimate quantity of coal fit for market.

All coals do not have the shiny lustre. Many of the best coals are dull and dark. Many times have superior coals been condemned because of their looks, when an unprejudiced trial would have shown that a splendid article was being rejected.

Q. I wish you would give some description of the general character and quality of the several grades of anthracite coal in the territory operated by the Reading Coal and Iron Company, and the locations of the lands from which they were derived. Geologically, I understand that there is a progressive change in the quality and characteristics of the coal lying in the western end as you pass to the eastward, and still more as you come finally toward the end of the lower Lehigh region called

Mauch Chunk. A. Starting at the western end of the Southern Field, or the Southern prong of the "A," we have the Lykens coals. They are produced from the four veins lowest geologically in the measures. Passing to the east we have the White Ash. The White Ash measures are the measures next above the four veins that I have spoken of. Coming to the east, the next grade of coal we have is the Lorberry. This is a free burning and soft coal. I do not mean to say soft in the understanding of bituminous coal, but soft from an anthracite standpoint. Then, as we pass still further east we strike what are known as the free-burning White Ash measures. Those free-burning White Ash measures extend from the neighborhood of Branchdale through to Silver Creek, which is almost to Tamaqua. Then, passing on still further in the neighborhood of Tamaqua and east of that we come to the hard White Ash measures. I might add that in the neighborhood of Minersville we are mining what is called the Schuylkill Red Ash. The Schuylkill Red Ash coal is the coal mined from the upper veins. The Schuylkill Red Ash is the product from the upper veins, geologically, and the veins underneath the Schuylkill Red Ash are White Ash. Then, passing through Mahanoy City we have the hard White Ash measures.

Q. You are going to the westward on the Northern leg? A. Traveling to the westward on the Northern leg. These are White Ash measures extending to the vicinity of Ashland. From Ashland to Mount Carmel we have again the free-burning White Ash measures, corresponding to the same coals in the Southern Schuylkill. As we travel to Shamokin, we have the Shamokin coal, which is White Ash again. Traveling on to Trevorton, at the extreme end of the Northern leg, we have the Franklin coals, which is an extremely soft coal for anthracite, and free burning.

Q. You began in the Lykens Field by stating that the coal consists of the four veins lying lowest geologically. As you came eastward you did not compare the upper or workable veins in the various other regions. Will you

mention that, because we want to avoid coming back to it? A. I do not know that we could sum it up in the number of veins. We have territories where certain veins are workable, and passing on a short distance those same veins become worthless, so that there is no way that I know that we could sum it up in the number of veins. I might also add that in these four Lykens veins I referred to, they are worked at Lincoln colliery. Over at Brookside there are only two, and when you get to Good Spring there is only one there that is workable.

Q. To conduct the operations of the Philadelphia and Reading Coal and Iron Company I will thank you to give us some idea of the extent of the operating staff of officers and employees, including mining engineers, electrical engineers, mechanical engineers, and other professional men, and also including the clerks at the collieries. That is, excluding the men working in the mines or in the breakers. A. This statement was made off of our roll. In our Engineering Department we have a staff of ninety-eight men; that is, including our engineers and men of various grades in our engineering department. In our Mining Department: Superintendents, heads of our building departments, coal inspectors, heads of our machinery departments, and clerks in that department, we have one hundred and seventeen. That includes men of all grades, all the way down, including everybody. In our supply department we have thirty-one. In our machinery department, which is made up of our shops, we have thirty men. The land department, we have thirty men. In our paymaster's department we have thirty-two men. At the collieries we have one hundred and eighty-nine clerks.

Q. None of those numbers include the operatives, so-called—for instance, those in the shops? A. No, sir.

Q. I would like to have you give us the elements of the cost of producing anthracite coal and placing it in the cars at the breakers in a period from November, 1900, to May, 1902; November, 1902 to March, 1903; and from March, 1903 to February, 1909, inclusive in each

case, beginning with the cost of labor, properly so-called. I distinguish these various periods for this reason, that the period beginning November, 1900, to May, 1902, inclusive, covers the labor cost which resulted from the advance in wages following the strike of 1900; the period beginning November, 1902, to March, 1903, will disclose the cost as resulting from the advance of ten per cent. in wages which became effective November, 1902, as the result of the award of the Anthracite Strike Commission; the period from April, 1903, to February, 1909, covers the additional labor cost resulting from other features of the award of the Anthracite Strike Commission. A. From November, 1900, to May, 1902, the average per ton was one dollar and thirty-five cents, average labor cost; from November, 1902, to March, 1903, $1.45.9; from April, 1903, to February, 1909, $1.57.4.

Q. What was the average labor cost immediately prior to November, 1900, before that advance went into effect? A. For the year prior it was about one dollar and thirteen cents or one dollar and fourteen cents.

Q. The advance, then, amounted to about sixteen per cent. in miners' wages—the increase. A. On November 1st, 1900, there was an increase of sixteen per cent. There had been a strike prior to that time, and this was a settlement of the strike. The strike was settled with an award of ten per cent.—not an award, but an agreement; an agreement of ten per cent.

Q. An agreement to advance wages? A. Yes, sir. The strike started in the middle of September, 1900. Approaching that strike the price of coal increased.

Q. Had advanced? A. Yes, sir; due to the coming strike.

Q. You mean the demand from the markets in fear of the strike? A. Yes, sir. At that time, or prior to that strike, the collieries of the Reading Coal and Iron Company were operating on a sliding scale, by which the men shared in any rise or fall in the price of coal below a certain point. Due to the rise of coal early in September and the latter part of August, the men received an advance

of six per cent., so that when the strike was settled the ten per cent. in the Schuylkill Field was added to the six per cent., making an increase in the Schuylkill Field of sixteen per cent. This sixteen per cent. is figured in these statements for this period from November, 1900, which was the end of the first strike to May, 1902, which was the beginning of the second strike.

Q. After the strike of 1902 the men went to work on the first of November? A. Yes, sir.

Q. After an agreement had been entered into on the suggestion of the President for the establishment of a Board of Arbitration? A. Yes, sir.

Q. After the award was made there was a straight advance in wages of ten per cent., which became effective the day the men returned to work, November 1st, 1902. Is that the correct statement, or substantially? A. It is, in part. The men went to work November 1st, 1902, with the understanding that the whole matter of wages and other questions of dispute were to be settled by the Strike Commission. The Strike Commission sat during the Winter, and finally rendered their decision sometime prior to April, 1903. That awarded the contract miners an increase of ten per cent. in wages; it awarded the company men—nine hours to be a day's work—the company men are the men that are working by the day. Up to that time the day in the anthracite region had been ten hours. Their award was that they were to have a day of nine hours without any reduction in pay. Then, in addition to that, there was an award on a sliding scale. That is, the wages of the men—the wages of all the employees—were to increase one per cent. for every five cents that the average price of coal would increase above four dollars and fifty cents at tide, the price to be considered being on the sizes above Pea coal. In addition to that, certain other increases were given. For instance, firemen—the men firing the boilers—were granted an eight-hour day at the same wages. They had previous to that time two shifts, and the fireman covered the twenty-four hours. At this time the firemen were awarded an eight-hour day, making three shifts of firemen

without any loss of pay. Then, there were certain concessions granted to hoisting engineers, who were employed the twenty-four hours. They were given an eight-hour day. And other engineers who were employed continuously each day were given Sunday off without loss of pay, the companies being required to employ an extra man to take care of the Sunday shift. Then, there were certain other minor concessions given.

Q. So that the general result of all these various advances, beginning November, 1900, and then continuing until the present time, was an increase of the cost of production for wages alone of forty-three cents a ton? A. That is the present increase, and the increase since the 1902 strike, forty-three cents for labor. That, of course, embraces the sum total of all the increases. That is the aggregate since the 1900 strike.

Q. That is for labor alone? A. Yes, sir.

Q. I would like to have you now take up for comparative purposes the conditions of labor cost, earnings of the men, and so forth, for the two comparative years of 1898 and 1908. I select these years because the year ending June 30th, 1898, is the first full fiscal year after the Coal and Iron Company resumed the operations of its business upon the surrender on the first of December, 1896, by the Receivers, and 1908 as the last full fiscal year for which our details have been collected. A. I would just state that we have reduced the day. Of course, as I stated before, after 1902 the day of the company men was nine hours. Prior to the 1902 award the day was ten hours. We have reduced the day to ten hours. We made the day on the basis of a ten-hour day so as to equate that equally. In 1898 the average earning per day of the men working our mines was one dollar and sixty-seven cents; in 1908 it was two dollars and twenty-eight and eight-tenths cents, or an increase of sixty-one per cent. per day, or per ten hours. So as to make it absolutely clear, I will make it per ten hours. Of course, in the anthracite regions we speak now of a day, which means nine hours, but this comparison is made on the

basis of ten hours. I might just say that the net earnings of all our men in 1898 was $8,164,836.76. In 1908 it was $15,785,527.67.

Q. An increase of ——? A. It is nearly double.

Q. Can you give us briefly the difference in cost of producing coal between the year 1898 and the year 1908? What was the difference in the total cost of producing coal in 1898 and the cost in 1908? A. In 1898 the average cost of coal was one dollar and eighty-two and seven-tenths cents.

Q. At the breaker? A. At the breaker. In 1908 the cost was two dollars and fourteen and six-tenths cents.

By Mr. McReynolds:

Q. Thirty-two cents difference? A. Thirty-two cents, yes. I might just add, that the cost to produce in 1900 was one dollar and sixty-seven cents.

By Judge Campbell:

Q. That is for the year 1900, before the strike? A. When I say 1900, that means the year prior to July 1st, 1900.

Q. The year ending June 30th of each year? A. Yes. They are not the calendar years; they are the fiscal years.

Q. Do these costs that you were taking up include labor, supplies, royalties, improvements, and so forth? A. Yes, sir; they include labor, supplies, royalty and improvements and general expenses. That is, just the costs I have given now. The labor cost that I gave originally was simply the labor cost at the collieries, men to load the coal at the collieries.

Q. Referring to royalties. Are there any royalties included in these statements of cost on coal mined in the company's lands operated by itself? A. No, sir.

Q. And it only includes royalties which are actually paid? A. Yes, sir. It includes royalties in subsidiary companies that we own.

Q. The company has to pay those royalties to those subsidiary companies, because they have outside stockholders, but the royalties that are included in your statement are confined to the royalties that are actually paid to lessors? A. Yes, sir.

Q. And do not include any royalties, or anything that represents a royalty, on the coal mined by the company from its own land? A. No.

Q. Suppose you give us the average total cost of mining for each year from 1898 to 1908, inclusive? A. In 1898, $1.82.7, 1899, $1.58.7.

Q. How do you account for the marked difference between those two years? A. In 1899 the wages were five and nineteen-twenty-fourths per cent. below the two dollar and fifty cent basis. In Schuylkill region we were working on a sliding scale, and the basis of payment for wages was two dollars and fifty cents at Port Carbon. There was a fixed rate. During that year the rate of compensation was below that basis, due to the receipts for coal, and it was five and nineteen-twenty-fourths per cent. in 1899 below that basis.

Q. That does not wholly account for the discrepancy, does it? A. In 1900, one dollar and sixty-seven cents. In that year the sliding scale worked over or above the basis four-sevenths per cent. Then, in that year, in October, during the strike, that sliding scale was suspended by the agreement. In 1901 the cost was one dollar and eighty-two cents and six mills; 1902, two dollars and six cents and six mills; in 1903, two dollars and nineteen cents and six mills.

Q. Those three years you have last read show the results of those advances, do they not, to which you referred in a previous answer? A. Yes, sir. In 1904, $2.22.6; in 1905, $2.19.2; in 1906, $2.15.3; in 1907, $2.16.8; in 1908, $2.14.6.

Q. While you are at this point, I would like you to give us the production during each of these several years showing the growth of the production. A. Do you mean the tonnage?

Q. The tonnage, yes? A. In 1898, the tonnage was six million six hundred and eighty-one thousand six hundred tons. In 1899, seven million one hundred and fifty-six thousand seven hundred and thirty-four tons.

Q. Did that advance of about five hundred thousand

tons in tonnage tend to reduce the average total cost per ton? A. It all helps.

Q. That is one of the elements. A. Yes, sir. In 1900, eight million thirty-one thousand nine hundred and fifty-one. In 1901, eight million sixteen thousand nine hundred and thirty-five; in 1902, six million nine hundred and sixty-eight thousand five hundred and sixty-six.

Q. Why that decrease in tonnage in 1902 and 1903? A. The strike of 1902 started in May and continued over June, 1902. The end of our fiscal year was July 1st. It extended over until November, so that it came into both years.

Q. And that falling off in tonnage in the year 1902 was due to this strike? A. Well, yes, partly. I do not know that it was entirely due, but due in part to that. In 1903 it was six million two hundred and ninety-nine thousand four hundred and forty-nine.

Q. That falling off in tonnage was also, in a measure, due to the strike? A. Yes, sir; that was due to the strike. The mining that year was as brisk as it could be done. In 1904, eight million seven hundred and seven thousand five hundred and eight; 1905, nine million four hundred and thirty-eight thousand six hundred and sixty-five; 1906, nine million one hundred and fifty-two thousand three hundred and fifty-three; 1907, ten million fifty-four thousand seven hundred and thirteen; 1908, ten million two hundred and eighteen thousand three hundred and nine-two.

Q. I take it the variations on cost of production were affected by other considerations, such as water conditions, floods, fires, storms, breakages of machinery, and other extraordinary matters? A. They all add to it.

Q. Will you be good enough to give us some general description of these various accidental and extraordinary experiences which confront your operations? A. We are unfortunate enough at various times to have fires take place in the mines. Also, during very wet seasons we have an unusual quantity of water which finds its way into the mines.

Q. I suppose you meet sometimes also with the contrary conditions of droughts? A. We had last Fall in our region a very extended drought that lasted in the various parts of the territory for several months, and during that time we were compelled to haul water for boiler purposes, and I think during that period we hauled something like about one hundred and twenty million gallons of water on railroad trains.

Q. You are speaking now of fires and floods. Your machinery breaks down sometimes? A. Those are things that we try to guard against. Of course, we have breakdowns in machinery that suspend collieries, and compel us to go to the expense of renewing and also to a loss of operation.

Q. All these various elements, and perhaps others, tend to make variations periodically in the cost of production? A. Yes, sir. As we are free from them they are to our advantage, and of course as we have them they add to the cost.

Q. There is another element that you alluded to in a very general way in the preliminary statement, but I do not know whether it was done specifically or not. You have squeezes in your coal measures? A. Yes, sir.

Q. Which require additional drifting and clearing away? A. Yes, sir. We have places where the measures squeeze, where the gangways have to be reopened or where they have to be heavily timbered to protect ourselves from them.

Q. All these things, I take it, go into the variations from time to time in the mining cost? A. Yes, sir.

Q. And, therefore, there cannot be any absolute proportional statement of cost that will be persistent and continued right along? A. No, sir. There are always things that will make it irregular. Of course, we try to meet those as best we can.

Q. You referred some time since to the transportation of coal by mules, and so forth, and the way you left that seemed to include only the transportation under the ground. You do not include, of course, any railroad

transportation from the collieries, from the breaker? A. No, sir. We are done with the coal the minute we load it on the cars.

Q. But you do have superficial transportation on the surface from the openings to the breakers? A. Yes, sir.

Q. Give us some illustrations of the extent of some of them? A. On the surface. We have one colliery that we haul the coal three miles.

Q. On the surface? A. On the surface. We have other collieries where we haul it a mile, and we have some where it runs a thousand feet.

Q. Continuing the consideration of the increased cost of producing coal from 1898 to 1908, I would thank you to refer to the subject of materials and supplies, and give us some special illustrations of advances of consequence. A. I had taken off the increase in the cost of certain articles we purchased. Rails in 1898 were nineteen dollars a ton; in 1908, twenty-six dollars and thirty cents. Sheet iron advanced from one dollar and ten cents to one dollar and eighty-five cents.

Q. What are the percentages of those increases? A. The increase on rails is thirty-eight per cent. The increase on sheet iron is sixty-eight per cent. Corrugated iron we bought for one dollar and sixty-five cents per hundredweight in 1898. In 1908, two dollars and forty cents. A total of forty-five per cent. increase. Mules cost us $112.50 in 1898; cost $207 in 1908.

Q. How many mules do you use? A. We have about two thousand five hundred mules.

Q. That was an increase of how much? A. Eighty-four per cent. in the price of mules. Understand, we do not buy two thousand five hundred mules annually; that is the total we have, two thousand five hundred. We buy about two hundred mules a year. Hay cost us nine dollars and ten cents in 1898 and fifteen dollars and sixty-five cents in 1908, an increase of seventy-two per cent. Corn cost us thirty-eight and a half cents in 1898; seventy-nine cents in 1908, an increase of one hundred and five per cent. Oats cost us thirty-two cents in 1898 and fifty-

eight and a half cents in 1908, an increase of eighty-two per cent. Southern yellow pine, 12x12, cost us sixteen dollars in 1898 and thirty-one dollars and fifty cents in 1908; an increase of ninety-six and nine-tenths per cent. Hemlock cost us six dollars and thirty-five cents in 1898; twelve dollars and fifty cents in 1908. Round timber increased about fifty per cent. Round timber is the timber we use for props in the mines.

Q. Large quantities of these things you use? A. Yes. The round timber proposition is one of our heaviest expenses in the Schuylkill Field. Our bills aggregate about $100,000 a month, for round timber. Pig iron was eleven dollars and thirty cents in 1898; eighteen dollars and forty-five cents in 1908, an increase of sixty-three per cent. Copper, ten dollars and seventy-seven cents in 1898, thirteen dollars and sixty-three cents in 1908; a total of twenty-six per cent. increase. Four-inch pipe increased from sixteen dollars and twenty-four cents to thirty-three dollars and sixty-nine cents, or one hundred and seven per cent. White oak car lumber, from twenty dollars and seventy-six cents to twenty-seven dollars; thirty per cent. increase. Bar iron per pound from one cent and an eighth to one cent and eighty-five one-hundredths cents; an advance of sixty-four per cent. Steel boiler plate from one and forty-seven one-hundredths cents to one and nine-tenths cents; an increase of thirty-two per cent. In our manufactured articles, castings increased from one and twenty-two one-hundredths cents to two and eight-tenths cents, an increase of seventy per cent. Composition metal castings, from nine and a half cents to fourteen and thirty-six one-hundredths cents; an increase of fifty-one and six-tenths per cent.

Q. Are there other items that occur to you as of especial importance? A. I think those are representative.

Q. Of the general increase of materials and supplies connected with the mining operations? A. Yes.

Q. These costs of production are based upon the entire tonnage, including the smaller sizes? A. Yes, sir, the total tonnage.

Q. Both in respect of wages, materials, supplies and all the other items? A. Yes, sir.

Q. I wish you would give some description, in general terms, of the cost of protecting the safety of the mines and of employees, ventilation and the like. A. I do not know how I could differentiate that.

Q. We have statutes in Pennsylvania, have we not, which require certain methods of protection? A. We have a mine law that the mines have got to be operated in accordance with. We are so used to doing that that we do not differentiate it in money any more. We expect to do that.

Q. Do you know whether or not, in all your experience, the Coal and Iron Company's operations have been rather in advance than merely in obedience to the provisions of these statutes? A. We try to do everything we can to provide for the safety of the men, whether it is in the law or not.

Q. You anticipate the provisions of the statutes then, in some instances, I take it? A. We try to do that, yes, sir.

Q. The fact of the matter is, the provisions which have been made by the Coal and Iron Company in conducting its operations have been used as a basis by the legislators in requiring other people to do the like; is not that so? A. I would not like to say that. I would not like to testify to that.

Q. Why would you not like to say it? Do you not know that to be a fact? A. It would look like presumption on my part to say so.

Q. If you do not know it, of course you should not say so. During the administration of your predecessors, then, who were responsible for it, do you not recall that such things did occur? A. Generally supposed to have, yes, sir.

Q. It is true as a fact, then, that the legislation has rather followed the Coal and Iron Company's defensive operations than that the Coal and Iron Company have followed the statute? May I draw that inference? A. Well, you can.

Q. Have you had occasion to confer with the representatives of foreign governments on tours of inspection through our region on the subject of protection against mine gases and the like defensive measures? A. We had a visit from the representatives of Belgium and Germany, on their recent visit to the United States, in one of our mines.

Q. Did they offer or express any opinion as to the means employed by the Coal and Iron Company to protect the property and personnel of the employees? A. They expressed great satisfaction at what was being done, and had nothing to suggest.

Q. We can assume, I take it, that these provisions were expensive? A. They all cost money.

Q. May I ask you whether this preliminary statement which we have had put on the record is the result of a public address that you delivered some time since? A. Yes, sir.

Q. What is the proportion of your production due to the present methods of preparation for the market, of prepared sizes, as compared with the smaller sizes? A. The average last year, I think, was fifty-five or fifty-six per cent. of prepared sizes, and the balance, forty-four or forty-five, small sizes. I have forgotten the exact figures; it was in that neighborhood.

Q. How long have you been a practical, anthracite coal mining engineer? A. I started at the business in 1882.

Q. Was that in the Schuylkill region? A. Yes, sir.

Q. Have you mined for years in all three regions? A. I was in the Schuylkill region from 1882 to 1889, and in the Wyoming and Lehigh regions from 1889 to 1903. I have been in the Schuylkill region from 1903 to 1913, and am at the present time.

Q. Are there or not very distinct geological and mining contrasts as between the Northern field and the Southern field in the anthracite coal regions? A. Yes, sir. In the Northern field the veins are flat, or nearly flat, the inclination running from generally under twenty or twenty-five degrees, and in many cases ten and less. In the Southern

Schuylkill field we strike very heavy pitches, and the veins contain more refuse. They are broken with the physical contortions made at the time of the development or creation of the coal.

Q. Generally speaking, are these veins and coal measures in the Schuylkill region deeper lying than those in the northern region? A. The depth of the Schuylkill region is not known. It is supposed that they are over four thousand feet in depth at the extreme point.

Q. Is the coal as it lies in the beds broken up more in the Schuylkill or Northern region? A. In the Schuylkill region.

Q. Generally speaking, are the coals in the Southern field more or less mixed up with impurities than in the Northern region? A. They are very largely inter-stratified with impurities, and very much more so than in the Wyoming region.

Q. What, if any, contrasts or comparison is there between the two regions in the matter of bed thickness? A. We have very thick veins in portions of the Schuylkill region, and we also have many that are thinner.

Q. What difference is there as to matter of density, hardness or friability? A. In the Schuylkill region the pitch, and, as I said, the physical contortions during development have crushed a great deal of the coal and made it soft, friable and shelly.

Q. Are there or not very striking differences in respect to the gaseous qualities of the coals in the two regions? A. In the Wyoming region we have a good deal of gas in the deeper measures, in the vicinity of Wilkes-Barre, but the coal is dense. The gas in our heavy pitches generally works out and makes up what is known in mining parlance as free coal, making the coal shelly and troublesome, causing the veins to run—what we know as running—therefore, requiring heavy timber to hold them in place, to keep them from running.

Q. Are there any striking differences in the matter of water in the mining operations of the Southern and the Northern fields? A. In the Southern fields the veins gen-

erally come to an outcrop, and those outcrops run along the surface at the point in which the vein reaches the surface, and that allows a great deal of water to enter the mines. In the Wyoming fields, the veins being flat, the distance at which they reach the surface and the number of times they reach the surface is very much less, and, therefore, there is not as much water finds its way into the mines as it does in our region.

Q. Taking the quality of the two coals in which region is there the greater loss in the mechanical preparation for market of the coal? A. In the Schuylkill.

Q. What effect has the deeper mining and the greater quantity of water and the mining on the pitch in the matter of fuel consumption at the power plants in the Schuylkill region and the Wyoming region? A. The increase of every gallon of water requires increased power, and, therefore, increased consumption of steam, and, therefore, compelling the use of coal to produce that steam.

Q. And there is a greater consumption of coal at the colliery in the Schuylkill region than there is in the Northern field? A. Yes, sir. In addition to that, the amount of material hoisted up in the Schuylkill mines is in excess of that hoisted in the Wyoming field per ton of coal, because the amount of refuse coming with the coal on the pitching veins, compels that refuse to be brought out and dumped on the surface. Where in the Wyoming field, that refuse being less in amount, is gobbed in the chambers of the mine.

Q. In other words, in lawyer's English, it is left in the chambers in the mines? It is not brought to the surface? A. That is what "gobbed" means, left in.

Q. I observe in Mr. Griffith's table that he has applied a uniform formula to determine the amount of unmined tonnage in the three regions which will go to market. By Mr. Griffith's table I mean the Government's exhibit in this case. In dividing into the foot acres of the unmined coal or original coal content with a devisor of 650 tons per foot acre. Mr. Griffith's explanation of his estimate of 650 tons per foot acre will be found on page 109 of the March issue of

the Bond Record of 1896, according to a note on the Government's exhibit. In order to ship to market 650 tons per foot acre of coal bed, as used by Mr. Griffith, or upon the basis of his estimate, will you please state how many tons per foot acre of actual coal in the bed it would be necessary to mine? A. At least 650 tons. As applied by Mr. Griffith in that estimate it is 650 tons per foot of bed from floor to roof, including whatever refuse is in that vein. If the refuse in the vein were eighty per cent. say, and the vein were ten feet thick in that case, the ten feet of the vein would be required to ship 6500 tons. If the vein were eighty per cent. coal, eighty per cent. of ten feet would be eight feet. Divided into the 6500 tons would give 812 tons per foot of coal in the vein. In addition to that there would be required that every ton of coal going to market would have to provide a certain amount that would be used at the mines for fuel, and for waste in the preparation. That is, when I say waste I mean in the mining, in blasting the coal out of the solid and finally getting it into the car, and then taking it to the surface and dumping it to the breaker and breaking it into the various sizes for market. There is a certain amount of that coal that is broken into particles too small to market or too small to use. The sum of those two factors, the fuel and the destruction at the mines is equivalent in our region, we estimate at thirty per cent. of the shipments. Therefore, thirty per cent. of 812 tons would be 243, or a total production from the coal in the vein of 1053 tons. That would be where the vein contains eighty per cent. of coal. On the other hand, should the vein contain fifty per cent. of coal only, and the vein were ten feet thick, there would then be ten feet thickness of vein and five feet thickness of coal in that vein. The ten feet at 650 tons would give 6500 tons. The five feet of coal in that vein divided into 6500 tons would give 1300 tons of coal to market from each foot of coal in that vein. Adding to that the thirty per cent. of fuel and waste would require that 1300 tons to contribute 390 tons for the fuel and which would make a total of 1690 tons. Therefore, the ten-foot vein with eighty per cent. of coal would be required to get

out of each foot of coal something over ten hundred tons, and the ten-foot vein with fifty per cent. of refuse in it would be required to get 1690 tons.

Q. Does this factor, varying so with the amount of impurity in the vein and the coal consumed in the colliery production in steam raising, and the varying factor due to the friability of the coal, and its breaking down, occur in proportion? Is it rational or defensible, and is there a constant factor of that sort in determining the tonnage going to market? A. The varying factors entering in the mining of coal would not allow any constant factor to be applied to all classes of veins or all classes of pitches of the veins, and to all states of hardness or density of the coal in the veins, nor to the varying conditions of top and bottom. There are many other factors that would enter into this, so that to arrive at an estimate, each condition in each territory in each vein should be known.

Q. Do you know Mr. Griffith? A. Yes, sir.

Q. Where does he live? A. At Pittston.

Q. Is he a practical mining man? Is he engaged in practical mining? A. He has been a geologist. I think he was at one time connected wih a mining company near Pittston.

Q. Has he ever mined in the Schuylkill region? A. I never heard of him doing so.

By Mr. Coudert:

Q. You do not know whether he has or not? A. I have never heard of it; no.

By Mr. Reynolds:

Q. You have never heard of it since 1883? A. I feel almost satisfied if he had I would have known it.

Q. He has never made a distinguished performance in mining, I take it, up in that region, or attracted attention? A. No.

Q. Has there been a rather pathetic history of these Wyoming miners that have come down to the Schuylkill region and started in mining on the theory that the Schuylkill region would produce the same factor of tonnage to market that the Wyoming region did? A. We

have had a number of operations started in comparatively recent years.

Q. What happened to the Chamberlain operation, and who engaged in it?

(Counsel for the Government object to this whole line of testimony as totally immaterial.)

A. The Chamberlain and Marion Coal Companies were located about three miles to the west of the Palmer Vein and along Mill Creek and near St. Clair. Prior to 1864, the Ronaldson Colliery operated the Peach Mountain and Little Tracy Veins on this tract, but had abandoned their operation in about 1864. In 1892, the Chamberlain Coal Company composed largely of mining men from the Lackawanna region, bought the tract and developed it. The Peach Mountain, Little Tracy, Tracy and Little Diamond veins were developed and mined. The equipment was the very best and represented the very latest in coal mining practice. The company had abundant financial resources and every effort was made to secure a satisfactory result. In 1896, the Chamberlain Colliery was transferred to the Marion Coal Company at the head of which were other men of experience in the Scranton field. The new company operated it for several years or until 1899, when the mine was abandoned, and the equipment and improvements dismantled and sold. During the entire period of operation from the opening in 1892 to the abandonment in 1899, but 121,000 tons of coal was shipped, representing the entire effort of that length of time, though every effort was made to secure an output. This mine had opened the Peach Mountain, Little Tracy, Tracy and Little Diamond Veins. With the result of the development of this colliery in mind, I quote the testimony of Captain May, one of the stockholders of the Chamberlain Company, given at the last case: "Q. That was an operation that covered about how much unmined coal when you started in on your operation? A. Some estimated that there were 30,000,000 there; but then the more conservative estimate was about 12,000,000 tons. Q. The estimates of men in the business differed that

widely on that particular mine did they? A. That is right. Q. As to the amount of tonnage there was unmined? A. That is right. Q. You are speaking now of the tonnage that they estimated could be taken out? A. Yes, sir."

Q. They did not get 650 tons per foot acre out of that mine to market? A. It does not appear so.

Q. What was the history of the Thuron operation? A. The Thuron Colliery located to the west of the Chamberlain colliery about three miles. The Williams Coal Company in 1894 re-opened the Spencer and Milnes Slope on the Tracy Vein. It was located adjacent to West Branch of Norwegian Creek at the west end of Pottsville. This company was composed of experienced and successful mining men from the Wyoming region. They developed the Tracy, Little Diamond and Diamond beds, and operated the mine until 1901, when it was abandoned, and the equipments and improvements dismantled. This company was composed of men of financial ability and mining experience. During the seven years of operation about 360,000 tons were shipped.

Q. Were they able to get 650 tons per foot acre out of that operation? A. It did not appear so.

Q. What is the history of the Albright? A. To the west five miles in the same basin in 1893, the Salem Colliery was re-opened by the Albright Coal Company. This property lies directly south of Llewellyn. The Salem, Sand Rock and Peach Mountain veins were developed and mined. The proprietors of this company were from the Lackawanna region. Shipments were begun in 1894, and the mine operated until 1905, when it was abandoned. In the twelve years of operation the entire shipments were about 500,000 tons. The greatest shipments in any year being about 63,000 tons. The tonnage given here was acquired from the Pennsylvania State Mine Inspector's Reports covering those collieries.

Q. Were they able to get out 650 tons per foot acre to the market? A. It does not appear so.

Q. What was the history of the York Farm? A. York

Farm Colliery. This colliery was opened in 1889 just west of Pottsville in the first basin, by the Lehigh Valley Coal Company. The mine was located about two miles southwest of the Williams Coal Company operation. All the beds lying above the Diamond, were developed, viz: Diamond, Little Diamond, Tracy, Little Tracy, Peach Mountain, Sand Rock, Salem and Brewery. This represents the entire number of the Red Ash series, excepting the Orchard. The equipments and improvements erected by the Lehigh Valley were the very best and the very latest word in mining. The colliery was ready for shipments late in 1891, and operated for nine years and in 1899 was abandoned. The total output secured in the entire period of nine years from all the veins was about 500,000 tons. This colliery was located in the first basin which is the deepest, and lies adjacent to Sharp Mountain.

Q. That operation, I understand, is abandoned and gone to rack and ruin? A. It is abandoned, dismantled and filled with water.

Q. What was the history of the Feger Ridge operation? A. This operation was opened in 1884 on the Sand Rock Vein. In 1886 it was purchased by the Lehigh Valley Coal Company who opened the Peach Mountain Veins. The veins were in such poor condition that the operation was abandoned. This colliery was located along the Swatara Creek near Newtown. It will be seen that these six operations (Chamberlain, Williams, York Farm, Silverton, Black Diamond and Feger Ridge) started at periods ranging from 1886 to 1894; they were operated by independent owners. Palmer Vein Colliery, started in 1876 and abandoned in 1890, is in the same class. All were located in the Central area referred to and worked the beds in the group from the Salem to the Diamond, known as Red Ash beds. All had proved failures and been abandoned by 1905. They reached over a reach of country from New Philadelphia to near Newton, about 13 miles in extent, and illustrate the difficulties to be met in the mining of the veins in the central territory of the Southern Field. Considering the difficulties met in nearly

every case by the many operations of prior date in these same beds, shows how little dependence can be based on them in the Southern Field.

Q. What was the history of the Pottsville shafts? A. In the Southern Field the greatest effort to open the White Ash veins (I might say that the White Ash veins are the veins running from the Primrose down to the Buck Mountain) was made in 1873 by the Pottsville shafts sunk over 1600 feet to the Primrose from which the Mammoth was cut by tunnels. I might say that this quotation is from a report of General Pleasants in the annual report of the company January 18th, 1877. "The two Mammoth Vein shafts, now known as the Pottsville collieries, have been sunk to the required depth of fifteen hundred and ninety-six feet. The veins are in excellent condition, and so free from water and firedamp, that although the mines have not reached a large shipment, yet the coal is being produced at a cost per ton below the average of the other collieries of the Company. This operation is destined at an early date to become the largest and most economically worked colliery of the company. It has now a daily capacity of production of five hundred tons, which will be increased in the year 1878 to one thousand tons per day, and in the year 1879 to fifteen hundred tons per day."

Q. How did that prophecy pan out? A. I give the actual results of the operation of the Pottsville Colliery, the Mammoth Vein shaft. In 1876, for eleven months, 25,020 tons. In 1877, 48,501 tons. In 1878, 2,574 tons. According to the prophecy of General Pleasants, it should have been 300,000 tons. In 1879, 24,305 tons. According to the prophecy of General Pleasants it should have been 450,000 tons. In 1880, 40,714 tons. According to the prophecy of General Pleasants it should have been 450,000 tons. In 1881, 16,261 tons. According to the prophecy of General Pleasants it should have been 450,000 tons. In 1882, 41,067 tons. According to the prophecy of General Pleasants it should have been 450,000 tons. In 1883, 52,057 tons. According to the

prophecy of General Pleasants it should have been 450,000 tons. In 1884, 16,037 tons. According to the prophecy of General Pleasants it should have been 450,000 tons. In 1885, 2,157 tons. According to the prophecy of General Pleasants it should have been 450,000 tons. At that time the colliery was abandoned as the veins were so faulty as to make profit impossible.

Q. Did the total production of that mine in its entire history of ten years amount to as much as General Pleasants prophesied it would produce in the first minimum year of its opening? A. The total output for the entire operation of these years was 269,218 tons.

Q. What was the lowest prophecy for any one year's production of General Pleasants? A. 1878, 300,000 tons. The colliery was abandoned in 1885, and has never been re-opened.

Q. In these various operations I take it there are a good many units of 650 tons per foot acre that did not materialize? A. It would certainly appear that way.

Q. In Mr. Griffith's exhibit I observe another curious basis of prophecy which he has adopted, and that is that in the Wyoming or Northern region he has adopted as the limiting basis of mining four foot beds, according to the second column of his exhibit. On the other hand, when he gets over into the column of the Schuylkill region, both in the Western Middle or Mahanoy and Shamokin Field, and in the Southern or Pottsville Field, he assumes that he can mine the thinner veins, and throws into the unmined total in this region all coal down to a three foot bed. You are aware of that fact, are you? A. Yes, sir.

Q. Did you at my request procure from Mr. Griffith his original and supporting working papers in which he tabulated the three foot beds in the Western or Middle or Mahanoy and Shamokin Fields and the Southern or Pottsville Field? A. Yes, sir.

Q. He furnished you with all the working papers upon which he made this exhibit? A. He furnished a tabulation that represented the basis. I might also add that these

three foot veins are given in the published records of the Bond Record—the number of three foot beds that he used are stated.

Q. What was the total tonnage Mr. Griffith's tabulation, as shown in the original papers which he surrendered to you, and in the Bond Record, included in these three-foot beds in the Schuylkill region? A. The total acreage of three-foot beds is 184,413 acres, equivalent to 553,239 foot bed acres. Six hundred and fifty tons per foot acre amounts to 359,000,000 tons.

Q. That is by assuming that in the Schuylkill region you could mine down to the three-foot beds, and in the Wyoming region he assumed you could mine only to the four-foot beds, the condition of his basis threw into the Schuylkill field 359,000,000 tons of coal? A. Yes, sir.

Q. From your experience in mining in the three regions, as a practical man mining coal to send to market, is there any earthly reason or justification for his adopting the three-foot bed in the Schuylkill region and not adopting it in the Wyoming region? A. No, sir. The justification stated by him is because of the pitch. But experience with the Schuylkill region and with the Wyoming comes back again to the statement made before as to the character of veins. The beds in the Wyoming being firm, the Schuylkill region beds being broken, and heavy pitches, would make it appear to me that the balance should be on the Schuylkill side; that is, the larger basis should be given to us instead of making the mining basis smaller, as he does.

Q. That is, there would be more reason, from a scientific and practical standpoint, of saying you could mine down to the three-foot beds in the Wyoming region, and could not go below the four-foot bed in the Schuylkill region? Yes, sir.

Q. And he has them just turned around? A. Yes, sir.

Q. And turning them around he throws into the Schuylkill region the mere bagatelle of 359,000,000 tons of coal? A. Yes, sir.

Q. From the working papers which you received from Mr. Griffith, how much coal did he put in the unmined coal

content under his estimate in the Dauphin basin? A. 98,695,350 tons.

Q. Was that justified, in your experience? A. The Dauphin coal basin at the present time has no mining operations in it, nor has there been since 1860, with the exception of the Kalmia, working the Lykens vein, adjoining the Lincoln operation. There were some provings and attempts to open collieries for instance, on the Dull lands. Within five years a slope was sunk in one of the Lykens veins which proved a failure because of the condition of the vein. This is taken from the first geological survey of Pennsylvania. "The Dauphin Coal-Basin is now (1858) entirely deserted by coal miners; for several years little or no coal has been shipped from it. So unreliable do the seams prove, and so great is the outlay required, that, recollecting that former experiments have failed, no disposition at present is manifested to develop its resources." That was in 1858.

Later the Kalmia Colliery was opened by a water level tunnel driven into the Lykens in the Dauphin Basin, cutting the Nos. 4 and 5 beds. The beds were faulty and unworkable, long gangways 12,000 feet in length were driven to the east and west without satisfactory results; finally at a point about 6000 feet east and adjoining the present Lincoln operation the bed was found fairly good, and after this was mined out the colliery was abandoned. In 1909, the Dull lands, located on the north side of the Dauphin Basin was prospected with a view of opening an operation. After considerable preparatory work a slope was sunk on the Lykens No. 4, a distance of 95 yards. The vein developed about two feet in thickness. After spending six months on the work, it was abandoned because of unsatisfactory results.

I quote from the Second Geological Survey, Summary Final Report, 1895, The Dauphin Basin. "Condition of the coal beds: The uplifting and close folding of the strata, in this basin, has so rubbed, crushed and altered the coal beds, as to render them extremely variable and unreliable, both in thickness and quality, and they are all high in re-

fuse and small coal; this is especially true of the south side of the basin. It is possible, that improvements in the method of burning small sizes of coal, will so enhance their value as in time, to make mining of the beds of this basin, where there is a great quantity of coal above water level, a profitable one.

"At Kalmia Colliery (mine sheet XXI and XXII) Lykens Valley Nos. 4, 5 and 6 beds were mined. The beds are reached by a water lever tunnel, from the north side of Fourth Mountain, the gangways extend west two miles and east three miles connecting with Lincoln colliery workings; average dip of the beds is about 65° south. The thickness of the beds, and the yield of coal, is very variable; the tunnel section (columnar section sheet XI) gives a thickness of 2 feet 11" for No. 6 bed, 8' 8" for No. 5 bed and 2' 10" to 4' 6" for No. 4 bed; but the mine map shows in all the beds here and there stretches of gangways where the coal was so thin and so dirty that it was not thought worth while to work the breast."

Q. I note that reference to sheet XI. What does that reference mean? A. That is their sheet of sections that they make.

Q. By the State Geological Survey? A. Yes, sir.

Q. As I understand it, in round numbers, Mr. Griffith located in the Dauphin basin 100,000,000 tons? A. Approximately; yes, sir.

Q. Has there been any appreciable amount of coal come out of the Lykens veins over there? A. In that basin all that has come out has come out in this operation that I have just described. I do not know just what that is.

Q. It is a negligible amount in comparison with a hundred million tons? A. Yes, sir.

Q. The Dauphin basin has been a fizzle, generally speaking? A. It has a very dull reputation up our way.

Q. In Mr. Griffith's manner of estimating did he also consolidate veins through that territory, like the Lykens vein and the Buck Mountain vein, and in his supporting papers give the data upon which you could find what his computation was as to the output of those veins? A. Yes, sir.

Q. The Lykens Valley vein is what is known as premium coal, is it not? A. Yes, sir.

Q. That is when you can get it, it sells at a price in advance of any other coal in the market? A. Yes, sir; above the White Ash.

Q. So that it is sought by the coal miner as gold is sought by the gold miner, is it not? A. I should think so; yes, sir.

Q. It is the most desirable anthracite coal, if you can find it, that there is, is it not? A. Yes, sir.

Q. Roughly, what is the premium it commands in the market? A. It runs from about fifty cents to a dollar in prepared sizes.

Q. How much of coal in the Southern field did Mr. Griffith's estimate put into the Lykens veins? A. The total tonnage estimate in the Lykens veins in both the Southern and Western Middle field totals up a little over four hundred million.

Q. Just going briefly over the various workings of the Lykens veins, in the Southern Field of the Pottsville district, what has been the effect of experience on those prophecies? A. The estimate of coal covered territory that the developments have shown, the veins are in faulty condition. Mr. Griffith's estimate of the Southern Field calculates the Lykens Valley vein from a point midway between Forestville and Newton, and goes to the western ends of both the North and South Basins, or the Dauphin basin and the Wiconisco basin. Starting at the Northern outcrop of the basin and travelling westward along the outcrop a distance of forty miles to the extreme point of the Northern basin the vein has been developed at ten points and found unworkable in all of them, with the exception of No. 2 Vein at Good Spring and No. 3 Colliery, and at the extreme western end of the basin at the Short Mountain Colliery. Substantial developments were made north of Donaldson and Good Spring No. 1 at Valley View and at Bear Valley Colliery of the Susquenhanna Coal Company, and in all these developments the veins were found to be unworkable. At Good Spring No. 3 all the veins

were cut by a water level tunnel and only the No. 2 was found workable. It pinched in the gangway at a point 5000 feet west of the tunnel. Continuing eastward along the south outcrop of the North Basin, Short Mountain and Williamstown Collieries worked extensively the Nos. 4, 5 and 6 beds. At Brookside Colliery two beds have been found to be workable, No. 4 and 5, though Mr. Griffith in his estimate considers four veins. From Brookside east to New Lincoln Colliery the vein is not worked. The Quinn Slope sunk in one of these veins did not show it to be satisfactory. The New Lincoln Colliery opened a slope on the No. 2 vein, and tunneled to the No. 1 and 4 and 5 veins. After operating for several years the colliery was abandoned because of poor vein conditions. Lincoln Colliery. Turning to the west, Lincoln Colliery works the Nos. 1, 2, 4 and 5 veins. Still west of Lincoln, the Kalmia Colliery now abandoned worked the Nos. 4 and 5 veins. Along the Sharp Mountain workings is the Ellwood drift and Blackwood Colliery. These veins were cut there in an unworkable condition. The working collieries in this vein lie along the anticlinal, the measures of which rose and forced the vein out to form the Wiconisco and Dauphin basin. On the opposite sides of the Wiconisco and the Dauphin or Southern basins the veins where developed were found in faulty condition. Now, the question, always agitated, is with the north dipping beds of the southern basin and the south dipping beds of the Wiconisco basin in faulted condition, how far will the beds dipping off the saddle at Lincoln, Brookside, Williamstown and Short Mountain continue good and where will future developments show that the faulted condition of the other dips will be met.

Q. Of all these various operations, the Brookside and the Williamstown are about the only collieries in the whole region that have got anything out of the Lykens veins, are they not? A. No, sir; the Lincoln, the Brookside and Williamstown and Short Mountain and No. 4.

Q. And all the rest have petered out all over your basin? A. Yes, sir. All the collieries that had worked or attempted to work these veins have never found them in good condition except in these territories. And yet, on that very

dip between Lincoln and Brookside the new Lincoln colliery, after an experience of five or six years, was compelled to abandon it because of the poor condition of those veins even on that dip. I might add on that Lykens tonnage I gave it included the Lykens in the Western Middle field.

Q. In the Southern field Mr. Griffith threw into the Lykens veins about 285,000,000 tons? A. No; there were about two hundred and seventy approximately—265,000,000 tons.

Q. That left under the Griffith estimate about what tonnage in the Lykens veins in the Mahanoy field? A. About 130,000,000.

Q. Briefly, what has been the history of the last twenty-five years in fulfilling Mr. Griffith's prophecy as to that? A. Mr. Griffith's estimate considers the Lykens Valley vein a workable proposition from in the Mount Carmel district to the Western end of the territory and estimates the contents as 32,407 acres and the thickness of the bed at five, six and seven feet. In this area, on the south side, the vein has been opened at Brenzels, Helfenstein, Ben Franklin, Mt. Franklin and Lansdale collieries. These collieries worked the bed exclusively and have long since been abandoned because of the unsatisfactory conditions. At Enterprise, Locust Spring, Big Mountain, Burnside, Bear Valley and North Franklin on the south end of the basin, the vein has been worked in connection with the other veins of the collieries. Unsatisfactory conditions of the vein have caused the abandonment of the working of the vein at these collieries. On the north side of the basin, the vein was worked rather extensively at Mid Valley, Lukefiddler, Cameron, and North Franklin. All of these operations, however, have run the length of the area in which the vein was developed and was found to be faulty at the extreme western end of the collieries. The Catharine colliery, located at the extreme spoon end of the basin, is now operating this vein with a fair degree of success. There may be in this territory, as yet undeveloped, areas where this vein may be found to be a workable proposition, but where they are, and what extent they will cover, will have to be determined by developments in the future. Any development of this

area cannot be predicted at this time by the knowledge we have at hand. I might add that the only operation in the Western middle field working the Lykens Valley vein is the Catharine operation on the spoon end of the basin.

Q. Going to the Buck Mountain vein, and confining yourself to the Pottsville field for the moment, what tonnage did Mr. Griffith's computation prophesy would be found in those veins in that field? A. About 220,000,000 tons.

Q. Briefly, and as shortly as you can, what has the actual exploration in the last twenty years demonstrated as to the dependability of that prophecy? A. The Buck Mountain bed extends from Tamaqua on the east to and into the Dauphin and Wiconisco basins on the west. Its workings have been in the main adjacent to the north side of the main basin and extend on that line from Tamaqua to Wiconisco a distance of forty-one miles. In this length the vein has been developed at points in very good condition and in other developments it has been found to be unworkable. Along this stretch near Tamaqua for two and a half miles it is worked in good shape at Alaska and Newkirk, then for a stretch of seven miles to Pine Forest all the provings have shown it to be in an unworkable condition. In this area are the Mary D, Big Creek, Silver Creek Mining Company, Kaska William and Silver Creek. At Silver Creek determined efforts have been made at several points to develop good areas of the vein but with but little success as yet. From Pine Forest west to the end of the Pine Hill workings a distance of ten miles, the vein has been worked at Pine Forest, St. Clair, Oak Hill and Pine Hill in good condition. North of this section in the Heckscherville Valley the vein has been worked west and south of a line drawn through Pine Knot and Glen Dower. This includes East Ridge, Thomaston, Buck Run, and Glen Dower. This workable area is on the north slope of the Mine Hill and just about opposite where Pine Hill works it on the south side of the mountain. To the east of the line above referred to and to the east end of the Heckscherville basin the vein has been opened into at many points but in all the vein has been unworkable. In the main basin in the area south of St.

Clair, Oak Hill and Pine Hill the vein has been developed at Wadesville, Beechwood and Lytle and proved to be unworkable. To the west of Lytle at Forestville and at Otto Colliery developed the vein at eight points on water level, and also on the deep levels of the West slope with the result that at but the spoon end of the White Ash Tunnel basin was the vein found workable. At that point a good vein was cut and is being worked. To the west of Otto, the vein was opened at Swatara in unworkable condition. To the west Swatara Middle Creek Colliery worked the vein in good condition. From Middle Creek to the Bear Valley workings of the Williamstown Colliery a distance of twelve miles the vein was opened at Colket and by eight different openings at Good Spring Colliery with no area of any extent of workable coal. At Valley View on the south dip an opening has been made in what appears to be a promising vein. At Bear Valley on both the north and south dips it was worked extensively. At Short Mountain Colliery further west and at the spoon of the basin it was cut but not workable. Coming east along the south side of the Wiconisco basin it was cut at Valley View Tunnel in poor condition. Coming still east at the point of the saddle at East Franklin the vein was again cut in non-workable condition. At Lorberry further west and south of Lincoln the vein was cut but only a small area found to be workable. Coming to the Sharp Mountain rim of the basin and going east Blackwood opened the vein at four points and is working it at two places. Still going east to the Fitzpatrick opening at West Branch and Lucy R at Port Carbon but little is known of the developments. Still going east at Bell Colliery it is faulted. Still further east at Tamaqua it is in good condition and has been worked years ago at West Lehigh and Wabash. In the Broad Mountain basin the vein is in good condition in the eastern half where worked by Morea and New Boston collieries. This description briefly outlines the conditions now developed on the Buck Mountain bed. Many points have been found unworkable, but there are long distances where the vein is being worked, especially along the Mine Hill Mountain.

Just what areas will be proved workable in the future and where, will have to be determined by developments.

Q. You mean cannot be determined even now by prophecy? A. No.

Q. Is it fair to say that the Griffith estimate of the minable coal in the Schuylkill region is, in respect to all the veins, subject to the same sort of criticism you have made of the Lykens Valley and Buck Mountain veins, though in a less degree? A. Yes, sir.

Q. Has experience and exploration absolutely demonstrated the fallacy of that exhibit? A. I do not see how anybody without knowing all the factors entering into this thing, and those factors have not been determined in a great part of the territory, could make any prediction as to the amount of coal that would be ultimately mined from this territory.

(At one o'clock a recess of one hour was taken.)

Q. What amount of coal did Mr. Griffith estimate was in the Red Ash veins in this Schuylkill field? A. In the Red Ash veins as worked by these operations that I have enumerated, about 300,000,000 tons.

Q. Were those Red Ash veins worked at the operations of the Chamberlain, York Farm, Thurton, Feger Ridge, Albright and Black Diamond? A. Yes, sir. They were not all of them worked at each place, but all of them worked some of them.

Q. Did that exploration justify any such estimate as Mr. Griffith had made? A. The abandonment of all these collieries would indicate that the veins could not have been in good condition.

Q. The Philadelphia and Reading Coal and Iron Company, formerly bought coal, did it not, from some independent operators on what was generally known as the sixty-five per cent. basis? A. Yes, sir.

Q. How many of those contracts did it have at the time of the decree in the old case? A. I should say not more than four, but I think it was only three.

Q. Were those with miners operating on coal owned by the Philadelphia and Reading Coal and Iron Company? A. Yes, sir.

Q. After the decree did the Philadelphia and Reading Coal and Iron Company then take any steps to continue to purchase that coal? A. They were abrogated.

Q. Mr. Brown testified this morning that they were purchasing about 16,000 tons a month. Do you corroborate that statement? A. As to the quantity, he would have the best data.

Q. Has the Philadelphia and Reading Coal and Iron Company during your administration, or during the last fifteen or twenty years, surrendered a number of leases on other properties? A. Yes, sir.

Q. Not too particularly, give a general idea of some of those that it surrendered. A. Since 1896, the Girard Colliery, North Ashland Colliery, 1898, West Bear Ridge Colliery in 1899, Buck Ridge Colliery in 1900, Girard Mammoth Colliery in 1904, East Bear Ridge in 1913.

Q. Was the Girard Colliery, for example, a large or small operation? A. It was a moderate size operation. I do not just remember what its shipments were.

Q. During your administration have overtures been repeatedly made to you to acquire more coal lands in that region? A. There have been presentations of land from time to time.

Q. What have you done with those offers? A. Declined them.

Q. Uniformly declined them? A. Yes, sir. We purchased some small holdings where they were interlocked with ours.

Q. That is, to square out a piece? A. Yes, sir.

Q. In the matter of acquiring new lands you have ceased to acquire? Is that a fair statement? A. Yes.

Q. Have you pursued any definite policy of development and conservation of your own collieries? A. We have been developing our collieries, making openings and improving them in various ways.

Q. How much have you spent out of income in the last

ten or a dozen years for your colliery improvements? A. $12,374,000.

Q. Roughly averaging about a million dollars a year? A. Yes, sir.

Q. Is the actual management of the Coal Company under you? A. The operating.

Q. Is it separate and distinct from the railway? A. Yes, sir.

Q. How many employees have you? A. 25,000.

Q. 25,000 of the employees of the Philadelphia and Reading Coal and Iron Company? A. Yes, sir.

Cross examination.

By Mr. Coudert:

Q. Do you know about the cost of production of coal? A. Yes, sir.

Q. That is within your competency? A. Yes, sir.

Q. In this statement put in by Mr. Brown to-day it appears that it cost to mine by the company $2.35 for the year ending June 30th, 1913. It appears from the statement furnished by the Philadelphia and Reading Coal and Iron Company to the Interstate Commerce Commission in answer to question No. 54, that the average cost per ton was $2.28 2/10? A. I would not know anything about that.

Q. Do you know why there should be an apparent difference in the two statements as to the same time? A. No, sir; I do not know that.

(Statement handed witness.)

The Witness:—It appears that that is the average statement for November. That is not for the year. This statement is for the month of November, 1912, whereas, as I understand it, the inquiry that you made was for the year.

Q. Yes. For the year ending June 30th, 1913. Why should there be that difference? A. The cost will vary in different months dependent upon the tonnage produced and a number of conditions that might enter into it.

Q. There were some conditions in the month of November apparently that made the production less expensive than

at other times? A. Of course, I cannot remember just that particular month. But, that is the inference, of course, that would be drawn from it.

Q. What would be those factors? A. If the tonnage was larger proportionately it would have quite a good deal of difference. It might be that we might have had heavy rains or heavy snow storms, or heavy pumping.

By MR. REYNOLDS:

Q. That was the month of November, 1912? A. Yes, sir.

By MR. COUDERT:

Q. Do you generally run your collieries to full capacity? A. We run them just as full as we have orders for the coal.

Q. Take for the last year, were the greater part of the collieries running at full capacity or not? A. No; we had a good deal of idle time.

Q. A good many collieries that were not run? A. No; most of the collieries ran equally.

Q. You equalize the output to some extent in order to keep them all running? A. Yes, sir; we have to keep our men employed. Otherwise, if we did not do that, if we shut certain collieries down, our men would be badly affected.

Q. How much owned and leased land does your company have? A. I think that was on a statement that was put in here.

Q. As I understood your testimony this morning, mining in the fields other than the Schuylkill is comparatively easy, is it not? A. No. The Schuylkill is harder than the other fields.

Q. They are comparatively easy compared to the Schuylkill, the mining in the Wyoming? A. I would rather put it the other way, that ours is harder than theirs.

Q. Theirs is easier than yours? A. Yes, sir.

Q. Is it not a fact that the Wyoming and the other fields, by reason of the less difficulty of mining, are much more nearly exhausted than the Schuylkill? A. They have a great deal of coal left, and, of course, that is the governing proposition.

Q. That is the fact, generally speaking, that by reason of the difficulties which you have so emphasized in detail this morning, of mining in the Schuylkill field, that miners are naturally more attracted to the other fields and have been in the past? A. Do you mean the workmen?

Q. The mining operations. A. Yes, sir; the operators.

Q. Have been more attracted to the other fields? A. Yes, sir.

Q. And the difficulties that you eloquently emphasized this morning have proved deterrents to operations? A. The mining, of course, in the Schuylkill has been deterred in a measure, of course, being more difficult.

Q. Is it owing to those difficulties that the various collieries that you spoke of this morning failed to make successful operations? A. Yes, sir.

Q. How many of these collieries were connected with the railroads? A. Only the Lehigh Valley.

Q. That was the only railroad colliery, was it not? A. Yes, sir.

Q. All the other collieries that failed were independent of railway connection or affiliation? A. Yes, sir.

Q. Does not that largely explain their failure? A. No, sir; I do not know how.

Q. You do not think it does? A. No.

Q. Has the Reading Company been successful in the Schuylkill district? A. We have some collieries that are difficult collieries, and some that are profitable.

Q. And some that are unprofitable? A. Yes, sir.

Q. What proportion of unprofitable collieries? A. It depends a good deal on the years and so on. Probably a quarter.

Q. Do you run them despite the fact that they are unprofitable? A. In the Schuylkill region, of course, collieries become profitable and unprofitable at certain periods. On account of heavy pitches, we have to have new lifts, and in the periods of develpoment from the time of opening those new lifts the expenses are heavier and the tonnage less.

Q. You are able, by reason of the wealth and power of

your company, to continue to run those collieries practically all the time, whether they are profitable or not? A. Of course we keep on going. One colliery helps another.

Q. How many collieries have you definitely and finally closed because they were unprofitable? A. I do not know that I could give you that. I would have to go over that to determine anthing like a proper answer.

Q. In anything like a very large proportion? A. In the time of the company there has been quite a number.

Q. And the lack of profit in those collieries is due to difficulties of mining? A. Difficulties of the veins in mining.

Q. You spoke of various technical matters this morning in connection with mining, and among other things you spoke of mining three-foot beds. Is it a fact that you are or are not mining three-foot beds in the Schuylkill district? A. There are three-foot beds worked and carried along with other mining. They could not be mined by themselves. And it is not mined as a general practice, but there are places where those three-foot veins are included.

Q. They can be mined where general operations are going on? A. If the vein has all the requisites of a good vein, White Ash, for instance, if the percentage of coal in the vein is good, and if the pitch is proper, if it maintains this character steadily, it might be worked with other propositions.

Q. There are a good many such veins worked, as a matter of fact, are there not? A. No; I would not say a good many. There are occasions where it is done.

Q. There are occasions where they are workable? A. Yes, sir.

Q. Have you made, or anybody in the employ or connected with your company, any estimate of your minable coal? A. I have never made any. There have been several estimates made.

Q. Will you tell me about those estimates, when they were made? A. One was made by General Pleasants in 1876.

Q. When was the next one made? A. One was made by Joseph S. Harris, in 1890.

Q. After that? A. That is all I know about.

Q. As far as you know, those were the only two estimates? A. That is all I know; yes, sir.

Q. Those estimates can you let me have, or your counsel? A. There is a published book of Mr. Harris's estimate, and General Pleasants' estimate was in one of the Company's reports, in 1876. As far as any papers, or anything on file, there is nothing on file to help them.

Q. Have you nothing on file to show how much minable coal the company owns? A. No, sir. Except those two estimates I spoke about.

Q. How do you explain the fact that a great company of that kind would not keep some inventory of its most valuable asset other than those two you have spoken of? A. As far as I am concerned, I have been the operating man for ten years, and my experience has shown me that the conditions are such in that territory that I could not make any estimate that would at all satisfy me as to what quantity of coal was in the ground. There are too many conditions that are uncertain, and that cannot be determiend. So that any estimate would simply be the most various kind of a guess, and would not satisfy me at all.

Q. Have no estimates been made for taxing or assessment purposes? A. In our region, because of the general recognition of the difficulty of arriving at any tonnage estimate, the tax is levied in our territory entirely on an acre basis.

Q. So that you are taxed on your coal bearing acreage? A. Yes, sir.

Q. Have you in any way averaged the value of those coal lands? How do you value them per acre? A. Of course, there is a considerable discussion over it, and finally some figure is arrived at.

Q. You could furnish us with those figures, showing the assessment value of your coal lands, lands owned or operated or leased by you? A. Yes, sir; we can do that all right.

Q. Do you remember off-hand, about what that is an acre? A. I would not like to state it. It is a variable quantity.

Q. Have you any way of averaging the coal to an acre of coal land—the quantity of coal in an acre of coal land? A. It would be so different in all the localities, and then the various veins would present a different proposition, that we never attempted to do that. There would be so many factors that you could not arrive at any satisfactory proposition. It would not be of any value to us after we had done it.

Q. What relation has the assessed value of the coal lands to their market value? A. The assessed value is supposed to be the value that each separate tract would sell at a forced sale. That is the law of Pennsylvania.

Q. So that the assessed value is very low is it not? A. Comparatively; yes, sir.

Q. It would be naturally at a forced sale? A. Where we have bought lands, we have bought at about the assessed value. The assessed value is supposed to be about sixty per cent.

Q. Then the basis of taxation is an assessed value of the land, which assessed value represents about sixty per cent. of the real or market value of the land? A. Yes, sir.

Q. In the old Reading case you testified, on page 706, fourth volume, "the price in the market on prepared sizes has advanced a dollar a ton, according to this statement, and the average cost of production from $1.82, in round figures, to $2.14, or 32 cents a ton on all sizes; is that right? A. That is from 1898? Q. Yes." That testimony was given in 1909. Since then the cost of production has advanced from $2.14 to $2.35? A. We have had an increase in labor, and we have an increase in material.

Q. That explains the difference between the $2.14 and the $2.35? A. And, of course, we have some harder conditions. It would be equated in those three things, higher labor cost, higher material cost and harder conditions at the mines.

Q. In other words, from 1898 to the present time the cost of production has increased 53 cents? A. If that is the correct figure; yes. I do not remember the figures.

Q. The price of coal wholesale at tidewater has increased from $1.30 to $1.80, has it not? A. I do not know. That is a question I would have to study out.

Q. I will ask you to say whether that is not a correct statement. It is the answer to question No. 58 Interstate Commerce Commission, Docket 4914. A. As far as the receipts are concerned, I would not have any way of knowing whether they were right or not. They would not come under my department.

(Mr. Reynolds stated that Mr. Brown would be able to answer this question.)

By MR. COUDERT:

Q. Is it within your department to know about improvements in mining during the last fifteen or twenty years? A. Yes, sir.

Q. Is it not a fact that there have been very great improvements in mining? A. Oh, yes.

Q. In the direction of conservation? A. Yes, sir.

Q. Is it not possible to save a great deal more coal than was done say twenty years ago? A. Mining was being done very well twenty years ago. Of course, it is constantly improving.

Q. Is the percentage of waste less now than it was then? A. No; not the percentage of waste. We cannot change that.

Q. Is the loss so great? A. Do you mean in the ground?

Q. Yes. Do you get more coal out of the ground? A. Yes, sir; there is more coal gotten out of the ground.

Q. More than you did then? A. Yes, sir. But, of course, we cannot change these conditions I spoke about. We cannot change the character of the vein, or anything like that.

Q. Is this a true statement, from your experience, "In the early history of mining in both the anthracite and bituminous regions the percentage of loss was consider-

ably more than half a ton for every ton mined." A. I think that is true yet.

Q. "In the anthracite region it is estimated by the Anthracite Waste Commission, which made its report in 1893, that the recovery was only forty per cent., or, in other words, a ton and a half was lost for every ton sold. At present the recovery in the anthracite region is from 60 to 65 per cent., so that conditions are reversed, and for every ton of coal lost a ton and a half is sold or used?" Is that true or not? A. I think 60 and 65 per cent. will be reached in the Wyoming region, in the flat veins. But in the heavy pitching country due to the top and due to the conditions I have stated of the different veins, we cannot do that.

Q. What would be the difference of that percentage between the Schuylkill and Wyoming region? A. I think that forty per cent. in our region would be high for the favorable veins. Of course, where the veins are very thick we would not reach that. Of course you understand that the greater stratification of waste in the veins in the Schuylkill region makes quite a difference.

Q. Is it true that the exhaustion in the anthracite region in Pennsylvania is probably equivalent to double the production? A. That I would not like to testify to now.

Q. But it is a fact that much coal is now saved that was formerly wasted, is it? A. Yes, sir.

Q. About how much per cent. would you say? A. I could not give percentages.

Q. Ten per cent. is what you said before, so I suppose that is correct? "I should say the question was what proportion was that of the total production to the whole. I should say that probably ten per cent. of what we are shipping now was then waste." A. That was a comparison between 1880 and 1909?

Q. Yes. A. That question was in answer to the sizes of coal. It was not in answer to the question of the production from the mine.

Q. How would that be now in regard to the size of the

coal, that saving, would that be greater now than ten per cent.? A. Let me see what that was in answer to. That was in regard to small size of coal, was it not?

Q. "Much of the coal that is now marketable and a valuable product was then a by-product and thrown out on the culm bank, was it not?" and your answer was "Only the very small sizes." A. Yes, sir.

Q. Then you go on to say, "I should say that probably ten per cent. of what we are shipping now was then waste." That would be true to-day, would it not? A. Yes, sir.

Q. Has that ten per cent. increased at all since then? A. No, sir. My answer refers now to the same thing, small sizes.

By Mr. Reynolds:

Q. It is not a generalization of the coal fields? A. No.

By Mr. Coudert:

Q. But you say, generally speaking, mining is now more economical or less wasteful than it was formerly? A. I think so.

Q. Is it growing so all the time? A. We are trying, of course, to produce those results. That is all I can say about that.

Q. Of course, that change in the mining would naturally affect statistics made sometime ago? A. Whatever that was, it would be that much different.

Q. Who determines to what extent your company shall work its collieries? Do you, or does the president determine that? A. The sales department advises what they can sell. Of course, as soon as they cannot sell the coal the thing dams up.

Q. That is to say, as soon as there is an overstock of coal you then discontinue the production? A. Then we have to slow up. We stop working a day, or something like that.

Q. Does that happen frequently? A. Quite often during the dull season.

Q. So just as soon as the market is dull, then you restrict the output? A. As soon as the market is saturated we have to stop.

Re-direct examination.

By Mr. Reynolds:

Q. November, 1912, the month for which the Government put in figures showing the cost of operation, was, I take it, following the April and May of 1912? A. Yes, sir.

Q. What condition existed in the coal regions in April and May, 1912? A. A strike.

Q. Did the collieries get running until the first of June that year? A. About the first of June. The 24th of May we started up, but it was the first of June before we got things going.

Q. It took you that time to get your water out and get things in shape to mine? A. Yes, sir.

Q. Do you recollect in a general way whether you were about as busy as you ever were in your life in that region for the first of June until six months thereafter? A. Yes, sir. That six months was the busiest time we ever had. There was a great demand for coal, and we were trying to supply the market.

Q. In November, 1912, can you recollect with enough definiteness to say whether or not that was or not the greatest month of production you ever had? A. I understood that. I have not got that in mind just now, but I would not be surprised if that were so.

Q. It was a very full month of production, was it not? A. Yes, sir. Of course, we were doing everything we could to produce.

Q. It was right as Winter was coming on? A. Yes, sir.

Q. Is the natural result of increasing the production in tonnage to simply make a large divisor into your ordinary expenses of running a colliery? A. There are certain fixed charges that remain the same. Other charges increase, but the certain fixed charges, of course, do not increase in proportion to the tonnage increase.

Q. Your taxes and all such constants would be divided by a larger divisor? A. Pumping and supervision and timbering and so forth.

Q. Would the natural result of that be to make the

quotient of the cost per ton smaller by several cents? A. Yes, sir.

Q. Is that a fair explanation of the apparent lower price in November, 1912 over the average for a year including Summer and Winter months? A. Yes, sir.

Q. You spoke of one company operation having been abandoned in the Schuylkill region. Was that the York Farm operation of the Lehigh Valley? A. The York Farm; yes, sir.

Q. How long was Blackwood Colliery, of the Lehigh, idle? A. Three or four years.

Q. That is now running again, is it not? A. Yes, sir.

Q. What company owns and operates the Pottsville shaft? A. The Reading Coal and Iron Company.

Q. That was among the failures, was it not? A. Yes, sir.

Q. Can you say from your general recollection, and generally, about what margin of difference there would be in the cost of production at an unfavorably situated colliery and a favorably situated colliery; that is, the difference between the minimum and maximum cost of production? A. It would run about $1.10.

Q. In the Schuylkill region? A. Yes, sir.

Q. As a matter of fact, is not the basis of the Pennsylvania tax law in fixing the assessment on each separate tract a figure representing what it would sell for at a *bona fide* public sale? A. Yes, sir.

Q. Those are the words of the act, are they not? A. Yes, sir.

Q. You spoke of Joseph S. Harris having made an estimate of the holdings of the Philadelphia and Reading Coal and Iron Company in 1880, I believe? A. Yes, sir.

Q. Are you familiar with an article that he wrote in 1892 on that general subject of anthracite supply? A. I have read it.

Q. Do you remember this statement of his in that article. "All that it is safe to say in regard to any prediction on this subject is that it will probably be falsified by the event? A. I remember it; yes, sir.

Q. Is that true? A. Yes, sir.

Q. As true to-day as it was when he wrote it? A. Yes, sir.

Re-cross examination.

By Mr. Coudert:

Q. Your counsel laid some stress upon the fact that the production for November, 1912, was 952,994.16. Is that a phenomenal month? A. That is a very good month, but it is not the highest month.

Q. And it is not so very much above the average? A. Yes, sir; it is a very good month.

Q. How many millions did you produce that year? It was over nine, was it not? A. Nine millions; yes, sir.

Q. How many did you produce last year? A. I think about eight or nine millions, I have forgotten what it was, but I think it was about nine million. But, there is a little difference between mining 750,000 tons a month and 950,000. Of course, when 950,000 is mined in one month in a nine million year, that means some other month is going to be less than the average.

Q. But you have had better months than that? A. Yes, sir.

Q. So that is simply a good full month? A. Yes, sir; it is a good full month.

Q. You always normally slacken in the Summer months, do you not? A. Yes, sir; in June and July, along there, and in August.

Q. You stated that Mr. Griffith gave you his papers and data. Do you know Mr. Griffith personally? A. Yes, sir.

Q. You had talked with him about it? A. I called him up and asked him for them.

Q. Did he know what you wanted the data for? A. Yes, sir.

Q. Did you tell him you wanted the data in order to discredit him? A. I told him that his estimate was introduced in this case, and I wanted to know how he arrived at it.

Q. You did not tell him, however, that you wanted his data in order that you might discredit his reliability, did you? A. I do not know that I said just those words. But, I would not get those data for fun when there was a law suit.

Q. What did you tell him you wanted it for? A. I told him I wanted to see it to see how his report was made up.

Q. Did he ask you why you wanted it, or for what purpose, or anything about it? A. No.

Q. All you did was to ask him for it and tell him you wanted to use it, and he gave it to you? A. Yes, sir.

Q. You did not tell him you wanted to use it to make any attempt at destructive criticism of his figures, did you? A. I did not have any long conversation with him about anything. I simply asked him for it, and he gave it to me.

Q. So you really obtained it from him without telling him what you wanted it for? A. No; I did not.

Q. You said you told him you wanted to introduce it in evidence? A. I told him his report had been introduced in evidence in this case.

By Mr. Reynolds:

Q. You told him you were going to use his figures in this case? A. Yes, sir.

By Mr. Coudert:

Q. You gave him notice that you were going to use that data to in reality uphold his figures when you were going to destroy his figures? A. No, sir.

Q. I ask you if you told him or intimated to him in any way that you desired that data for the purpose of criticising his estimate? A. I think that was the understanding, yes, to find out just how it was. I cannot remember just exactly the exact words that we exchanged. I do not propose to testify to exactly the exact words.

Q. As a fair minded gentleman are you convinced that Mr. Griffith understood from you when you requested his figures, that you desired to use them for the purpose of destructive criticism of him? A. I wanted to see how

his estimate was made up, to see whether it was accurate or not.

Q. Please answer the question.

(Question read to the witness.)

A. When I got those papers his understanding was I was to use them in any way I saw fit. That was my understanding.

By MR. REYNOLDS:

Q. And in connection with this case? A. Yes, sir.

By MR. COUDERT:

Q. Did you inform him that another witness in this case had been called by the Reading Railway for the purpose of criticising and discrediting his figures? Did you tell him that? A. No.

Q. You did not tell him that? A. No.

Q. Did you tell him you had been requested by counsel to examine his figures, with a view of destroying their reliability? A. He knows what I wanted them for. He knew my position, and what I was interested in.

Q. But you did not tell him they objected to him? A. I do not know that I said that.

Re-re-direct examination.

By MR. REYNOLDS:

Q. He did not assume that you were going to build up his figures, being on the side of the Reading? A. No.

Q. You told him his exhibit had been put in by the Government in this case? A. Yes, sir.

Q. He knew you were on the other side of the case? A. Yes, sir.

Q. You told him you were going to use his figures in this case? A. Yes, sir.

Q. In connection with his exhibit? A. Yes, sir.

By MR. COUDERT:

Q. And he sent them to you at once without any question? A. Yes; made them up and sent them to me.

Q. You have known him well for years? A. Yes, sir.

By Mr. Reynolds:

Q. He is still alive, is he? A. He was the last time I heard from him.

Q. And in the jurisdiction? A. Yes, sir.

Re-re-cross examination.

By Mr. Coudert:

Q. Did you pay him anything for his data? A. Yes, sir.

Q. How much did you pay him? A. $500.

Q. How did you agree on the terms? A. He just sent us the bill.

Q. He sent you a bill? A. Yes, sir.

Q. You called him up on the telephone and told him you wanted to use his data and he sent you a bill for that amount? A. Yes, sir.

Q. Did you ask him what the amount would be when you asked him for the data? A. Yes, sir.

Q. You paid it without any question? A. We have not paid it yet. We will pay it.

Q. Are you going to pay it? A. Yes, sir.

Q. You are not going to question it at all? A. No.

Q. So that you bought his data? A. That is for his services in getting it up for us.

Q. Have you ever paid him before or retained him? A. He has been employed by us before; yes, sir.

Q. In what connection? A. He was employed by us in a tax suit in Northumberland County.

Q. Tell me what he did for you there? A. He gave testimony as to coal lands and so on.

Q. Was that in court? A. Yes, sir.

Q. That testimony was given in Court? A. Yes, sir.

Q. He testified as to the value of coal lands? A. Yes, sir.

Q. You put him on as an expert for the railroad company? A. For the Coal and Iron Company.

Q. You had other experts? A. Yes, sir.

Q. And you relied upon his testimony to aid you to win your case? A. With others; yes, sir.

Q. And you paid him for that testimony? A. Yes, sir.

Q. Do you remember how much? A. No, sir; I do not remember what it was now.

Q. That was on one or on several occasions? A. On one occasion.

Q. Was that a matter of any importance? A. Yes, sir; some importance.

Q. Did you retain him on any other occasion? A. No, sir.

Q. On that occasion you retained him as an expert? A. Yes, sir.

Q. It was about what date? A. About six months ago.

Q. You had known him many years? A. Yes, sir.

Q. You had seen his reports in regard to coal lands? A. Yes, sir.

Q. And knowing him well and knowing his work, you retained him as an expert for the Reading Coal and Iron Company and paid him to testify as an expert? A. In that case; yes sir.

Q. That is a fact, is it not? A. Yes, sir.

CHARLES F. HUBER, recalled for further cross examination:—

By MR. COUDERT:

Q. Your counsel tells me that this statement you now produce was extracted from a report containing considerable other matter, which he thought had no relevancy to the case. State what that other matter was? A. It was a general report, in which he went on into the detailed description of land by openings and company houses, and the condition of the colliery improvement, and all that sort of thing, in connection with the physical condition of the property. This extract includes everything there was in the report pertaining to the acreage and tonnage.

Q. This is everything there was in the report? A. Everything that there was in the report pertaining to acreage and tonnage.

(Statement produced by the witness is as follows):—

"EXTRACT FROM REPORT OF P. W. SHEAFER TO CHARLES PARRISH,

"under date of May 9th, 1874, covering lands of the Lehigh and Wilkes-Barre Coal Company in the Wyoming Region.

"The coal lands in the middle and western portion of the Wyoming Valley cover an area embracing some thirteen thousand acres, known as the Wilkes-Barre lands:

"Owned in Fee		2320 acres
"Newport and Hanover		8600 acres
"Plymouth		600 acres
"Wilkes-Barre—leased	1335 acres	
"Plymouth—leased	1030 acres	2355 acres
"In all		13875 acres

"These lands are shown on the accompanying map, giving their length and breadth, also shows the location of the several collieries, railroads, river, areas mined, etc.

* * * * * * *

"The four coals above owned and worked in your several collieries have an aggregate thickness as follows:

"Hillman or Primrose	6 feet
"Baltimore or Mammoth	16 feet
"Ross or Skidmore	20 feet
"Red Ash or Buck Mountain	16 feet
	58 feet.

"The area covered by the above coal beds, measuring horizontally and taking no account of the undulations in the strata which add to the quantity averages, possibly, 13,500 acres. This great surface multiplied by the above thickness of 58 feet gives in cubic yards or tons, the enor-

motis amount of.....888,946,666 tons
Deducting for loss and waste in mining
and preparation, say.....388,946,666 tons

We have the great sum of.....500,000,000 tons

* * * * * * *

"I am very respectfully,
"Your obt. st.
"(Signed) P.W. SHEAFER,
"Geological & Engineer of Mines."

"POTTSVILLE, PA., May 9, 1874."

EXTRACT FROM REPORT OF JOSEPH S. HARRIS TO THE RECEIVERS OF THE LEHIGH AND WILKES-BARRE COAL COMPANY, UNDER DATE NOVEMBER 22ND 1877, COVERING LANDS OF THE LEHIGH AND WILKES-BARRE COAL COMPANY IN THE LEHIGH REGION.

"I present herewith a report showing for the Honey Brook Division:

"1. The present condition of the property.
"2. Repairs and improvements needed for 1878.
"3. Probable shipments for 1878.
"4. Relations to contiguous property owners.
"5. Future of the property."

* * * * * * *

"5. Future of the Property.

"In common with much of the coal lands in the Lehigh region, the time has come when we can predict with a good deal of accuracy the end of the coal production in this Division. It is true there is much of the property which has not been thoroughly explored, but with the exception of the northwestern part of the property, where good coal is known to exist on a limited area, I am not sanguine that we shall find much of value. In what I shall here say, however, I shall leave all the unworked portion of the property out of this account, and treat only of what is developed. I insert here a table showing what, under the most favorable circumstances, this property may produce."

Collieries	1878	1879	1880	1881	1882	1883	1884	1885	1886	1887	Totals
No. 1	80,000	80,000	80,000	80,000							320,000
No. 2	100,000	100,000	100,000	100,000							400,000
No. 4	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	800,000
No. 5	100,000	100,000	100,000	100,000	100,000						500,000
Yorktown					100,000	100,000	100,000	50,000			350,000
Totals	360,000	360,000	360,000	360,000	280,000	180,000	180,000	130,000	80,000	80,000	2,370,000

"Yorktown" is the coal which the N. Y. & Lehigh people are applying for

"This estimate assumes that the quarry at No. 2 turns out well, that the Wharton vein can be mined where the dividing slate is thin, and that the Yorktown property will be held by us and mined in connection with our existing works. If the contingencies named above turn out unfavorably, we may not realize more than 60 per cent. of this product, say 1,400,000 tons, and six or seven years will then see the end of the coal. When the coal is approaching exhaustion, if prices are as low as now, the production will be overburdened by the cost of pumping, and may have to cease before the coal is all mined. However, while all such estimates are from the necessity of the case only approximations, Receivers may take this as about the best that can now be made. I estimate also that this amount of coal will be thus divided:—

	Mammoth.		Wharton.	
Collieries.	Tonnage.	End of Shipment.	Tonnage.	End of Shipment.
No. 1	100,000	1880	220,000	1881
No. 2	100,000	1879	300,000	1881
No. 4	400,000	1887	400,000	1887
No. 5	300,000	1882	200,000	1882
Yorktown.....	230,000	1884	120,000	1885
Totals	1,130,000	1887	1,240,000	1887

"If Yorktown is sold or leased, and is promptly worked out (as it will then be), our Honey Brook Division will almost cease to produce Mammoth coal after 1882; but by retaining it we can, if it is so desired, keep up a fair proportion of Mammoth coal till the property is exhausted.

"It would be wise to have some *further examinations* made *of the undeveloped lands in the Honey Brook Division* during the year 1878. It may take several months to do this satisactorily and we should by the Fall of next year be in possession of such knowledge as we need to de-

cide on, and be ready to start, such improvements as may be justified by what we find. If the basin of which we have the eastern end at the northeastern side of our property, is as valuable and extensive as it is represented to be, Receivers may find it wise to lease what lies beyond our boundary, if it can be had, and commence to work the whole. Only one party should work that basin, and some of the owners of land adjacent to ours are in such straits for money that they would now make as favorable terms as we could ever expect. To get this matter into shape would take some time and trouble (and may not be feasible) as the ownership of the land is not clear. I call receivers attention to it as one of the possibilities of this Division.

"I am strongly of opinion that there should be hereafter *very little outlay for improvements in the Division.*

"No. 1 Breaker may go at almost any time in a gale of wind. I would run it so long as it does not endanger life, and then let it go, and send the remaining coal from No. 1 colliery to some other breaker for preparation. All the other breakers should, if not accidentally destroyed, work out the coal naturally tributary to them before they give out, and the same may be said of the machinery. I would build no new houses, and after three or four years (when we begin to fall off in our production) I would let the repairs on some of the old ones cease, looking to the fact that by the time our Honey Brook coal is exhausted all of the Beaver Meadow region will be worked out and there will be no demand for houses, and much of the population must migrate to find work.

"Yours respectfully,

"(Signed) JOSEPH S. HARRIS,
"Sup. and Eng."

LANSFORD, PA., NOV. 22, 1877.

ESTIMATE OF TOTAL TONNAGE IN LANDS OF LEHIGH AND WILKES-BARRE COAL COMPANY AS MADE BY W. J. RICHARDS IN 1894, AND LETTER OF TRANSMITTAL ACCOMPANYING SAME.

WYOMING DIVISION:		
Held in fee:		
Wanamie Lands	156,687,300 tons	
Hanover	413,470,450 "	
Wilkes-Barre	93,561,660 "	
Plymouth	31,311,863 "	
Packer Lands	4,266,000 "	
		699,297,273 tons
Held by lease:		
Wilkes-Barre and Hanover	164,705,850 tons	
Wilkes-Barre—Mining Rights	1,476,000 "	
Plymouth	19,168,397 "	
		185,350,247 "
Leased by Company to others:		
Wilkes-Barre, Hanover and Plymouth	28,840,150 tons	
Lehigh-Luzerne	17,424,760 "	
Sub-leased	10,885,400 "	
		57,150,310 "
HONEY BROOK DIVISION		40,849,701 "
Total		982,647,531 tons

(Copy of Letter Accompanying Above Estimate.)

WILKES-BARRE, PA., March 21, 1894.

Mr. E. H. Lavcall, Genl. Supt.

DEAR SIR:—Accompanying this I send you an estimate of the tonnages contained in the Company's several properties in the Honey Brook and Wilkes-Barre Divisions. The tonnages given represent the entire contents of the veins as they are in the ground as no allowance has been made for any losses that may occur in the mining.

Yours truly,

(Signed) W. J. RICHARDS,
M. E.

ESTIMATE OF MARKETABLE TONNAGE IN LANDS OF LEHIGH AND WILKES-BARRE COAL COMPANY AS MADE BY C. E. HUBER IN 1900.

	Total Contents.	Minable.
Lands Held in Fee:		
Wilkes-Barre City and Township	93,561,660 tons	36,113,522 tons
Plymouth	31,311,863 "	10,542,530 "
Hanover Township	413,470,450 "	172,476,695 "
Warrmie Lands	156,987,300 "	58,548,446 "
Packer Lands	4,260,000 "	1,780,253 "
Lands held under Lease:		
Wilkes-Barre City and Township	139,452,095 tons	55,662,652 tons
Hanover Township	25,253,755 "	9,999,304 "
Plymouth	19,168,397 "	6,833,118 "
Mining Right	1,476,000 "	611,997 "
Lands held in fee and leased to others:		
Wilkes-Barre, Hanover and Plymouth	28,370,010 "	11,337,000 "
Lehigh-Luzerne Lands	17,424,760 "	6,728,454 "
Lands held under Lease and sublet to others:		
Parrish Coal Co. and D. L. & W.	11,355,540 "	4,606,573 "
Honey Brook Lands.	40,849,701 "	16,339,880 "
	982,647,531 tons	391,570,424 tons

Q. Are the tax assessor's figures at the present time estimated upon present coal recovery? A. Yes, sir.

Q. That is about sixty per cent., is it not? A. Do you mean about sixty per cent. minable?

Q. Yes. A. No. I have not resolved it back into that.

Q. It is based on the present system of recovery? A. Yes, sir. System of mining.

Q. And there is a difference in the present system to the old system of recovery of about how much? A. I couldn't say.

Q. I understand it is twenty per cent.? A. I have no knowledge of that at all.

Q. You simply know it was based upon the present

recovery, and that the assessment took into consideration that fact? A. The assessment was based on the present system of mining.

Q. How do you carry your minable land on your books? How do you value it on your books? A. I do not recall absolutely, but I think all of the coal property, improvements and everything, are carried in one item.

Q. That is, all the minable land and improvements, and the whole thing? A. Yes, sir.

Q. Carried in one item? A. That is my recollection of it; yes, sir.

Q. Am I right in supposing that on the books of your company, the Philadelphia and Reading Coal and Iron Company, that no differentiation is made between the value of the minable lands as such and the improvements? A. I do not think there is. I could not answer that positively. The Comptroller could answer that better than I could.

Q. Have you got here the value of the whole thing, the improvements, the minable land, and everything? A. No; I have not. Those books are not kept in the operating department; they are kept in the accounting department.

Q. Will you let me have that assessed valuation? A. I think Mr. Johnson can furnish you with that.

Referring to the article of Mr. Joseph S. Harris in "The Forum" for 1892, referred to on the examination of Mr. Richards by Mr. Reynolds, the Government will reserve any right to put into the record at some time before the case closes any extract from that article.

Re-direct examination.

By Mr. Reynolds:

Q. What sort of basis was the first of these estimates made upon? A. The first estimate, which I have here is an extract from a report of P. W. Sheafer, made to Charles Parrish, under date of May 9th, 1874, covering lands of the Lehigh and Wilkes-Barre Coal Company in the Wyoming region. An analysis of this estimate shows

that Mr. Sheafer considered four veins, to which he attributed an aggregate thickness of fifty-eight feet. As a matter of fact, the accepted and established thickness of those veins in this territory is forty-three feet. Furthermore, he took those four veins and spread them over the entire acreage which the company owned, which was far from the true situation. In other words, only one of those veins extended over this area, and the other veins extended over a very much lesser area. He then takes the thickness of fifty-eight feet, and multiplying it by the total number of acres, gets a contents of 888,946,666 tons. He says in this report, "Deducting for loss and waste in mining and preparation, say 388,946,666 tons, we have the great sum of 500,000,000 tons."

Q. He came out exactly even? A. Yes, sir.

Q. How is that; a pretty good report? A. That report was nothing more than a wild guess. There is nothing in the situation to back up any such report as that. Of course, we have mined out since 1874 approximately 100,000,000 tons, and, if the estimate had been correct, there would be 400,000,000 remaining.

The second report was a report made by Joseph S. Harris.

Q. He was the man from whom we quoted a moment ago in the "Forum"? A. Yes, sir. It covered only the Lehigh land of The Lehigh and Wilkes-Barre Coal Company. In this report Mr. Harris works up in detail the tonnage variably, and predicts that by 1887 the property will be worked out. In fact, he says the entire Beaver Meadow region would be worked out, and he advises that no repairs be made to the houses, as the people would have to migrate to find work elsewhere. As the collieries are still in operation, I think that speaks for itself as to the accuracy of that prediction.

By Mr. Coudert:

Q. It was very conservative, was it not? A. Very much so. Coming down to the first actual estimate that was made, I find in looking over the record, that in 1894

there was an estimate made by the chief engineer of the company, which showed the total tons in the ground and not the minable tonnage. In fact, we have appended to that estimate a letttei of transmittal from the chief engineer to the general superintendent, in which he states that the tonnage as given represents the entire contents of the veins as they are in the ground, but no allowance has been made for any losses that may occur in the mining. I find further that in the year 1900, when I was chief engineer for the company, I took this estimate that was made in 1894—this estimate made by Mr. Richards, who was then chief engineer of the company in 1894—I took this estimate of Mr. Richards that was made in 1894 and reduced it to a basis of minable coal, and the result of that calculation was 391,570,424 tons. Those are the estimates of which I have a record, and which are in our files at the present time.

By Mr. Coudert:

Q. By "minable" do you mean recoverable? A. Yes, sir.

Q. What percentage did you use in estimating the amount recovered? A. I did not figure it in that way. I figured it by municipalities and localities. There are so many conditions entering into these properties, that any flat percentage would not lead to a correct result. For instance, this Wyoming territory takes in the City of Wilkes-Barre. This company owns approximately 2000 acres, under only twenty per cent. of which territory do we control the surface, and under the balance we are bound to support. That materially affects the percentage of coal that can be recovered. Likewise, in the Wyoming Valley we own a couple of thousand acres that are under the river, and the river wash, and we have river wash there to the depth of 300 feet in the valley before we reach any rock. Some of these veins crop. We mine to what we consider safe cover under these conditions. There is nothing possible but first mining and surface first mining in a territory of that kind, and we have to take all

those conditions into consideration in arriving at the percentage recovered in different localities. This estimate was made up with all these factors in mind, and that was the result.

Q. So you made a very conservative estimate? A. I tried to; yes, sir.

Q. If anything, you exaggerated those factors you spoke of? A. No; I do not think I exaggerated them. I think this estimate referred to, in the light of the experience up to that time, approximately what we could get out of the territory. Of course, it is possible that in the future, with more price for the coal, and being able to introduce artificial supports, or something of that kind, we might be able to get out more tonnage than that, but, those are the possibilities which are mere conjectures. I cannot say anything definite as to that at this time.

Q. What was the difference between your estimate and Mr. Harris' estimate in tons? A. Mr. Harris made no estimate of anything except of the Lehigh lands. That is the small end of this company's properties.

Q. What was the difference between your estimate and Mr. Richards' estimate? A. Mr. Richards' estimate was on coal in the mine; it included all the tonnage in the veins, 982,000,000. I took that very estimate and reduced it to the basis of minable coal, and that resolved itself into 391,000,000. We figure in that territory normally twenty per cent. mining and preparation loss. If you figure it back on that basis, it would mean that you would have to take out one-half of the coal in order to ship 391,000,000 tons to market to-day.

Q. Did you take Mr. Richards' figures as substantially accurate, in your judgment? A. Those were the coal in the ground. It had only been made a few years prior to the time of my estimate.

Q. You had no objection to him as an expert? A. No.

Re-direct examination.

By Mr. Reynolds:

Q. I understood you to say that it was fallacious and unscientific to apply a uniform standard of recovery coal in tons per foot acre even over so limited an area as the Lehigh and Wilkes-Barre land? A. It is absurd, if you are trying to arrive at a correct result. If you should by any such method get the correct result it would be a matter of accident.

Q. Even in one small property? A. Even in a small property.

Q. It would be to the nth power fallacious to apply any such rule to 485 square miles, would it not? A. It would not apply at all.

Re-cross examination.

By Mr. Coudert:

Q. So that, as far as estimates of minable coal go, the best and most accurate and most scientific you have or you know of is the one you have made yourself, is it not? A. No; I do not think that is a fair statement.

Q. Do you know of any better one? A. I feel in reference to this estimate that we are talking about here now, that the developments in the Wyoming territory are far in advance of what they are in the lower or Schuylkill territory. That is, we know more about the territory. It has been developed to a larger extent. The veins are more regular in their character and more constant, and I think that an estimate with some reasonable degree of accuracy can be made in that territory. I do not believe that an estimate in the southern field can be made at all with any degree of accuracy. They do not know enough about it. No one does.

Q. Your familiarity is mainly with the other territory, is it not? A. I have a general knowledge of the entire field.

Q. But more especially, I mean? A. More especially in the Lehigh and Wyoming; yes, sir.

Q. Is it a fact that the territories other than the Schuylkill, Wyoming and Lehigh, are being exhausted much more rapidly owing to the comparatively less difficult mining? A. It is a fact that in proportion to the area there is more mining being done in the Wyoming region than there is in either of the other two.

Q. And that has been so for years past, has it not? A. That has been so for some years, yes, sir.

Q. Is this a substantially true statement, "The Wyoming and Lehigh regions, it will be seen, although originally containing only thirty-eight per cent. of the total supply, had up to 1912 contributed approximately sixty-eight per cent. of the anthracite coal. As a result, it is estimated that at the present rate of production, the Wyoming region will be completely exhausted in forty-one years, and the Lehigh region in sixty-three years." A. I do not know whether that statement is correct or not. I do not know on what that statement is based.

Q. Would you think that the Wyoming region at the present rate of mining would be completely exhausted earlier than the Lehigh region? A. No, sir.

Q. Would you think it was the other way? A. I should think the Wyoming region would last longer than the Lehigh region.

Q. You think then the Lehigh region at the present rate of mining would be the first to be exhausted? A. I will not say that either. I will qualify that, because the Panther Creek lands of the Coal and Navigation Company enter into the Lehigh region, and there is so little known about those lands, that there is an element of doubt in there that nobody can figure on.

Q. In your own opinion, will both the Wyoming and Lehigh regions be exhausted before the Schuylkill? A. I would not want to even say that.

Q. You have not any opinion about that? A. No; I have not.

Q. Do you know, as a scientific man, and as an engineer, whether there is a current opinion among the mining experts on that question? A. It has been generally assumed that the Schuylkill region would be the last region, and that has been based on the estimates that Griffith and these other people have made?

Q. What is your own opinion about that? You are an expert? A. My own opinion of it is that Mr. Griffith very much under-estimated the Wyoming field and very much over-estimated the Schuylkill field. That is my opinion.

Q. The current opinion is based upon the easier or more rapid mining, is it not, in the Lehigh and Wyoming regions? Is not the current opinion based on that as well as on any figures? A. I do not know. I cannot answer for current opinion. I do not know whose opinion you refer to.

Q. I mean the one you referred to as a general opinion that the Schuylkill will outlast the other two? A. No. If there is any opinion of that kind, I think it has been influenced by these reports that have been gotten out just as this report of Griffith's.

Q. Would not the easier mining in the two other fields be a factor? A. Do you mean in their more rapid exhaustion?

Q. Yes. A. It probably would, yes. That would all depend on how much of the total minable coal was taken out.

Q. But it is so, that the mining is easier there, and it has been a more tempting field?

A. Yes, sir; but there will be a higher percentage of the total coal recovered in that field.

W. C. JOHNSON, recalled for further cross examination:

By MR. COUDERT:

Q. Referring to the table I show you in the record, being a statement of the total annual production of anthracite

coal in Pennsylvania shipped to market showing in groups production of large interests including the independent operators what do you mean there by "individual operators mining?" Do you mean in the sense of the operators who are so-called independent? A. Yes, sir.

Q. That is, independent of the railroad companies? A. Yes, sir.

Q. Are Forty-Fort and Simpkins and Watkins and Sterrick Coal Company Temple Iron collieries? A. I believe they are Temple Iron collieries.

Q. Is not the Elk-Hill bound up to the Pennsylvania Railroad in some way? A. I do not think so. I am not positive.

Q. What do you know about the Pardee Companies, the three of them, how independent are they? Are they not bound up to the Lehigh Valley? A. I do not think they are. I am not positive though.

Q. You do not remember about that? A. They are not.

Q. How about Dodson & Co.? A. They are free.

Q. Did they lease their lands from any of the railroads? A. I do not know.

Q. Did not Dodson & Co. lease from the Reading? A. I do not think so. I do not know their land. I do not know how they got it.

Q. So some of these that you term independents may have leased their land from the railroad? A. Yes, sir; possibly so.

Q. You could not point out to me in that list of companies those which lease land from the railroad companies? A. No; I could not. I think the West End lease from us. They are all over.

Q. So you really do not know what the relations of these various companies are with the railroad companies? A. No.

Mr. Reynolds offered in evidence from the old case testimony of Charles E. Henderson, who testified on April 27th, 1909, as follows:—

Testimony of Charles E. Henderson, a witness called by the defendants in the old suit (Volume IV, page 542 and following), April 27th, 1909.

Direct examination.

CHARLES E. HENDERSON, having been duly sworn, was examined as follows:—

By JUDGE CAMPBELL:

Q. Where do you at present reside? A. Talbot County, Maryland.

Q. You are now retired from active business, and are simply a plain farmer? A. Yes, sir.

Q. Not in too much detail, kindly give us a general idea of your railroad experience. A. My first experience in railroad business was clerk at the station at Fort Scott, Kansas, on the Missouri River, Fort Scott and Gulf Railroad, in 1870. Next after that I was chief clerk to the General Freight and Passenger Agent of the same road. Next after that I was chief clerk for the general superintendent of the same road. This general superintendent was also superintendent of the Leavenworth, Lawrence and Galveston Railroad, at Kansas City, Missouri. During the time I was chief clerk, I was in charge of the accounting department of the Leavenworth, Lawrence and Galveston Railroad. When I left there I was prospecting routes for the line that is now the Kansas City and Memphis Railroad, part of the Rock Island road. Next after that I was general freight and passenger agent of the Atchison and Nebraska Railroad. After that I was auditor and cashier of the Indiana, Bloomington and Western Railroad, at Indianapolis, Indiana. After that I was assistant general manager of the same road, in charge of its whole business, the president being located in New York. For eleven years I was general manager of the same. Intervening between the time I was general manager of that road, I was Receiver of the same road. I was incidentally, however, at the same time manager of both roads. I was general manager of the Ohio Southern Railway for twelve years. On reorganization after the

receivership of the Indiana, Bloomington and Western Railroad, I was general manager of the reorganized company, the Ohio, Indiana and Western. That covers my railroad career up to the time that I came East as general manager of the Philadelphia and Reading Coal and Iron Company, in December, 1889.

Q. So that from 1870 down to date you have been continuously in the railroad service, and during that period covering all its branches? A. Yes, sir.

Q. Of what departments of the business of the Philadelphia and Reading Coal and Iron Company were you placed in charge when you came here in December, 1889? A. I was in charge of its mining operations and of its sales.

Q. How about credits and collections? A. Being in charge of sales, necessarily carried its credits and collections.

Q. You did, in fact, have charge of the credits and collections? A. I did. The accounting officer reported to the president of the company, as most of those accounting officers in the East do, and, of course, the collections came through the treasurer and secretary, but, necessarily, I had to have charge of the credits when I had charge of the sales.

Q. There was a change in the organization of the official status of the Philadelphia and Reading Coal and Iron Company in 1892 was there not? A. I do not know to what you refer.

Q. There was a new vice-president introduced, was there not? Mr. Harris became vice-president? A. Yes, sir. Mr. Harris became vice-president of the Coal and Iron Company. I do not recollect distinctly the date.

Q. What department did he take charge of and relieve you to that extent? A. Mr. Harris took charge of the mining operations. The general superintendent who theretofore reported to me, reported to him. I remained in charge of the sales department.

Q. Do you recall the appointment of the Receivers subsequent to that date, in February, 1893? A. I do.

Q. Did you continue in the service of the Receivers during their incumbency? A. I did.

Q. Under the same title of general manager? A. Yes, sir.

Q. After the foreclosure and sale of the Coal and Iron Company you continued in the same service for the new reorganized company up until a later date? A. I did.

Q. When were you made first vice-president of the Coal and Iron Company after the Receivership? A. October 1st, 1903.

Q. You continued in that position until when? A. April 2d, 1906.

Q. When did your service with the Coal and Iron Company terminate? A. April 2d, 1906.

Q. When you resigned? A. Yes.

Q. Upon the foreclosure and sale of the properties of the old Philadelphia and Reading Railroad Company, and their investiture in part in the new Philadelphia and Reading Railway Company, as appears by the record, what position did you take with the Railway Company? A. I was elected second vice-president of the Railway Company October 25th, 1896, and placed in charge of its freight traffic.

Q. How long did you continue in the service of the Railway Company as its second vice-president? A. To May 1st, 1908.

Q. Since that time you have been a farmer? A. Yes, sir.

Q. During your service as general manager of the Philadelphia and Reading Coal and Iron Company, and of its Receivers, who was the official who had immediate charge, under the president and the Receivers, of the subject of issuing price circulars and announcing to the trade the prices at which the coal produced should be sold, and the prices at which it was sold? A. They were all issued under my direction, over the signature either of the line sales agents or the general coal agent.

Q. Were those subjects of prices determined by yourself and the management and in consideration of what

circumstances and conditions? A. They were determined by myself. Of course, no great variations were made without consulting the management, the president, who was, of course, the final officer, and the Receivers, in the case of the Receivers.

Q. What circumstances and conditions of cost and trade and demand entered into your determination in fixing those prices, if anything? A. When I came to the company, its operations were conducted at a loss. Effort was made to obtain a fair and reasonable profit. Its business was at first in a very unsatisfactory shape. I thought first as to the credits. There was a large amount of money outstanding in notes. Credits, some of which I thought were unreasonable, were limited and restrained. The prices at which the coal was sold was, I thought, on an irregular basis. Prices were not maintained to a reasonable figure, and effort was made, of course, to correct what I thought were abuses, and to try to get the business on more reasonable and proper basis.

Q. What had the elements of cost and market conditions to do with the determination of that policy that you acted on? A. When the business was conducted at a loss, very naturally, an effort was made to conduct it at a profit, if possible.

Q. Were or were not the conditions of the market, and the element of cost of production, matters of consideration in determining what should be done to establish the business on a basis of obtaining a fair and reasonable profit? A. Necessarily, the element of cost entered into the question.

Q. It was the prime factor, was it not? A. It was.

Q. Did this condition of conducting the business at a loss prevail during the Receivership, or any part of their term of office? A. It did.

Q. It is in the record that the Receivership began in February, 1893, and continued until the 1st of December, 1896. Do I understand you to say that during a large portion of this period, or all of it, or part of it, the busi-

ness continued to be conducted at a loss to the Coal and Iron Company? A. During a part of the Receivership it was conducted at a loss. There might have been some special periods when it was conducted at a profit, but, on the whole, it was conducted at a loss.

Q. Have you in your mind the substantial figures which represented the losses of the Receivers of the Coal and Iron Company during their operations? A. I do not carry those figures in my memory. It has been a long time.

Q. It is a large amount? A. A large amount.

Q. Would it amount to as much as $3,000,000, according to your recollection, or do you not recollect? A. I should think it would be somewhere from one to two millions of dollars during the Receivership.

Q. Do you know how the Receivers met that loss? A. The Coal and Iron Company was unable to pay its freight bills to the Railroad Company. They remained unpaid.

Q. So that the Receivers of the Railroad Company had in their debits to the Receivers of the Coal and Iron Company the aggregate of that loss at the termination of their administration? A. They had.

Q. Did that condition prevail to any extent after the reorganization, after the transportation of coal was conducted by the Philadelphia and Reading Railway Company? A. Not to any extent ordinarily after that date. The Coal and Iron Company was able to pay its bills to the Railway Company.

Q. Did it pay them all ultimately? A. Yes, sir.

Q. You know as a fact, do you not, that the Coal and Iron Company has always paid its freight during your administration of the Coal and Iron Company and of the Railroad Company? A. You mean since the Receivership? Yes.

Q. I say the Reading Railway Company? A. Yes.

Q. During your administration, covering both periods, what efforts, if any, were made to extend and enlarge the markets for the coals produced from the coal operators? A. Every possible effort was made to extend and enlarge the business.

Q. In what regions? A. In every direction, but more especially New England and in the West.

Q. What with respect to dock properties operated by the Coal and Iron Company, say, for instance, in New England? A. They have a railroad dock property at Newburyport, another one at Salem; we leased a wharf in Boston; we had one at New Bedford; we had a commercial office in Boston, and traveling sales agents throughout New England.

Q. All points accessible to the coast? A. Yes, sir.

Q. Was there any effort made to increase and enlarge your all-rail trade? A. Yes. There was an effort made to increase the business over the New York, New Haven and Hartford Railroad, all-rail. It went by way of New York.

Q. Any all-rail business done through the northern railroads of New England, Boston and Albany, Boston and Maine, and so forth? A. There was a very small business done by the Poughkeepsie Bridge route.

Q. Before it came under the control of the New York, New Haven and Hartford? A. Yes, sir.

Q. How about the trade in New York City? A. Every effort was made to increase the trade in New York City that was possible. The Port Reading road was built just about the time I came here, and its business was developed as rapidly as it was possible to do so. The shipping facilities there were increased constantly, and the trade constantly increased.

Q. How about other points in New York, such as Buffalo, Rochester, and Canadian points? A. Almost immediately after I was appointed I made a trip to the West. The business of the company had been conducted through commission agents. On my return I reported it in an unsatisfactory condition. The business was taken over from these commission agents, and the properties that they used were acquired by lease, and agents appointed at Rochester, Buffalo, Chicago, Milwaukee, Minneapolis and Superior.

Q. Speaking of Superior, on the south side of the

western end of Lake Superior, is it not? A. It is at the extreme western end of Lake Superior, opposite the city of Duluth.

Q. And commands the business of the city of Duluth, as I take it? A. More or less, yes, just across the river or bay.

Q. Was this done with the result that you were in active competition for the increase and enlargement of your trade throughout all the accessible territory? A. Yes, sir.

Q. How about Baltimore and Washington? A. We had agencies in Baltimore and Washington, and made every effort to do the business of those places, and actually did about sixty per cent. of the business of Baltimore and Washington.

Q. During your administration was there not a very considerable enlargement and increase of your trade throughout all these territories? A. There was.

Q. Did these efforts continue down to the termination of your administration? A. They did.

Q. I would like you to give, with as much detail as you can without encumbering the record too much, the history of the construction of the storage yards on the line of the Philadelphia and Reading Railway established by the Coal and Iron Company, and the motive therefor. A. Shortly after I came to the Coal and Iron Company, as an illustration, I found Pea coal in Philadelphia in the early Summer months selling at sixty cents a ton. That same Fall I found they could not fill their orders at a dollar and twenty-five cents a ton. It seemed a sheer waste to me, and I thought that some provision ought to be made to carry that coal from the dull season to the active season for that size of coal. We estimated that that coal could be dumped and picked up again for say twenty-five cents, steam sizes, because there was comparatively little waste in that. Perhaps the prepared sizes would make a little more waste. As a commercial proposition it seemed manifest to me that that was a wise thing to do. I took it up with Mr. McLeod, and went to the region, took the general

superintendent and looked around for favorable places to make storage yards. We found one on a hillside at Mahanoy City, and another one at Schuylkill Haven.

Q. Before you leave Mahanoy City, state whether that yard was also employed at that time for the trans-shipment of coal in box cars to go West? A. It was; yes. That yard had been in existence for trans-shipment, and for having coal that was not prepared up to the standard, taken to a place where it could be prepared up to the standard. That was in existence, with a capacity of forty thousand tons. We immediately increased that to two hundred thousand tons, and built the Schuylkill Haven yard with a capacity of about two hundred and fifty thousand tons. It seemed wise commercially; that is, we could get a better price for the coal, but more than that, it enabled us to free the cars and to mine more economically and more regularly.

Q. How about other later developments in the line of establishing storage yards? A. These yards took care of the stored coal reasonably well, because they were afterwards both of them increased in size, and Schuylkill Haven to a capacity of five or six hundred thousand tons. But, owing to the difficulties of transportation which in later years was brought about by shortage of cars and increase of traffic on the road, it seemed desirable to have more of this coal nearer to destination, and, in later years, 1903 or 1904, a storage yard was built at Abrams, about twenty miles up from Philadelphia on the Schuylkill River, because it would be more accessible for bringing into Port Richmond and transporting into vessels, and for distribution generally.

Q. And at a point also, was it not, where the coal could be diverted? A. It was put at Abrams because it could be sent from there to Port Reading without being hauled back on the main line.

Q. What is the capacity of that yard? A. About three or four hundred thousand tons. It has been enlarged somewhat since I left.

Q. While primarily these yards were established for the

care of by-products when they were not marketable so as to allow the mines to go on and produce coal that was marketable, other coals besides smaller sizes have been in store, have they not? A. The storage yards carry perhaps as much prepared coal as they do steam sizes. The case I used was an illustration. The active season for prepared or domestic sizes is in the Fall of the year when the cold weather sets in. The dull season for those sizes is in the Spring and Summer months, and the steam sizes run practically regularly throughout the year, so that the dull season for one size is generally the active season for some other size, and coal is going in and out of those yards practically throughout the year.

Q. According to the demand for the coal? A. Yes, sir.

Q. As a corollary to this subject of storage, I would thank you to state what was done by the Coal and Iron Company to equalize the operations of the mines throughout the year rather than to be pressed beyond their capacity in what you call the active season? A. Through all the period of which I have any knowledge of anthracite transactions there has been a lower price in the Spring of the year, when the season was dull, than later throughout the year. That lower price in the earlier season of the year was for the purpose of inducing the users of coal to lay in their supply earlier in the season, in order that the mines might run more regularly throughout the year, and should not be neglected in one season and overpressed in another season. That was done in the earlier period of my experience in what I deemed a disorderly way. I thought it was always desirable that there should be some estimate made of what would make the equivalent to a purchaser of coal of buying it in the Spring and keeping it until the Fall when it would go out to his customers and one or two of the other gentlemen and I took some pains to figure up what would be fair, what would induce people to lay in their supply in that way and enable the mines to run more regularly throughout the year, to conduct their operations more economically, and to keep an adequate supply of coal on hand at all times without un-

due lowering of the price at one season of the year and an undue raising of the price at other seasons of the year, which we thought was certainly to the interests of the railroad, and certainly to the interest of the miners and coal companies, and felt also that it was in the interest of the public.

Q. Was this plan considered by your management? A. Yes. Mr. William H. Sayre and I talked it over first, and then I presented it to our management, and they thought it was wise to do it, and we put it into effect.

Q. What was the result? What do you refer to as having put into effect? A. This plan of regularly increasing the price, as has been done for the past few years.

Q. You mean reducing the price on the first of April? A. Reducing it fifty cents a ton on the first of April, and advancing it ten cents per ton each month until the Fall season, when the active trade was resumed and normally took up the supply of coal. The plan seemed to work to the satisfaction of everybody, and so far has continued.

Q. It is charged in the Government's petition that your company and others, or the corporations which control them, have entered into a combination and conspiracy to advance the price of coal and maintain it in an arbitrary way. While you were the executive officer in charge of this business was there ever any communication made to you by anybody else of the existence of any such combination or conspiracy? A. I have no knowledge of any such.

Q. None was ever communicated to you either from the inside or the outside? A. No, sir.

Q. And the prices which have been fixed by you in consultation with the management, and maintained by you in pursuance of the policy which you have described, has been the policy of your company independent of any understanding or arrangement or agreement with anybody else whomsoever? A. The prices were not maintained by us.

Q. But those that were obtained? A. They were simply the result of business judgment, and not as the result of a conspiracy at all.

Q. Of your own business judgment, the business judgment of your own company, your own management? A. Yes.

Q. So far as the mines of the Philadelphia and Reading Coal Company, it is in testimony already that they are tributary wholly and only to the Philadelphia and Reading Railway? A. There are only three or four of them that have any physical connection with any other railroad. Morea is one. That is connected with the Pennsylvania and the Lehigh Valley. Also the Lytle has a similar connection The Pennsylvania line has connection, one side of the track, and we have of the other Silver Brook has a connection with the Lehigh Coal and Navigation Company's tracks

Q. In respect to those collieries you have mentioned, Morea, for instance, the shipment of those coals is determined by the property ownership of the lands. Some of the companies connected with the Pennsylvania system are worked from that colliery, some of the Lehigh Valley's properties are worked from that colliery, and some of the Coal and Iron Company's properties are worked from that colliery? Is not that a fact? A. I do not think the Pennsylvania Company has any connection with the Morea. That is, Weston and Dodson's mine.

Q. If they desire to ship to points on the Pennsylvania Railroad? A. They do ship in all directions. There are three or four collieries.

Q. There are properties of the Coal and Iron Company operated from that colliery? A. Yes, sir. There are gangways of their mines that go into some properties of the Coal and Iron Company, which adjoin.

Q. And some properties of the Lehigh Valley Coal Company? A. I am not sure whether that is Weston and Dodson.

Q. That is the only colliery with the exception of the Lytle, which you have particularly mentioned? A. Lytle is owned one-third by the Pennsylvania Railroad Coal Companies, and the Philadelphia and Reading Coal and Iron Company own one-third of it.

Q. The ownership of the land controls the movement of the tonnage? A. An operator, when he mines coal of one of these coal companies ships it over the railroad with which it is affiliated.

Q. Do the leases cover that matter? A. The mining leases are usually made on that basis.

Q. You referred to the Silver Brook? A. The Silver Brook is practically exhausted now.

Q. Silver Brook colliery lies up at Lofty. Silver Brook colliery is not on the Schuylkill Valley branch at all, but is on a little branch railroad to Lofty? A. Yes, sir. But its traffic comes down.

Q. Silver Brook colliery has been abandoned some time since, worked out? A. Yes, sir.

Q. There is no coal comes down there? A. No, sir. The Lehigh Coal and Navigation Company owns lands between Tamaqua and Pottsville or Port Carbon on the line of the Schuylkill Valley branch, about half way between Tamaqua and Pottsville. They have a running right over the lines of the Reading Railway, by which they carry that coal from these collieries on this line with their own engines to their road at Tamaqua and thence carry it to destination by way of the Central Railroad of New Jersey and its leased lines of the Lehigh and Susquehanna, which belong to the Lehigh Coal and Navigation Company.

Q. That applies also to Alliance, that is not in here? A. Yes, sir. Alliance and Mary D. There are three collieries in there.

Q. On the lands of the Lehigh Coal and Navigation Company? A. Yes, sir. Kaska William is near Middleport on the branch between Tamaqua and Port Carbon. Mary D. is on the lands of the Lehigh Coal and Navigation Company, leased to Doctor Wentz's individual operation, who used to operate Silver Brook.

Q. With the exception stated, do the defendants, the * * * Central Railroad Company of New Jersey, * * * reach any of the collieries of the Coal and Iron Company or the collieries located on the lines

of the Philadelphia and Reading Railway Company? A. With the exceptions stated, none of them have physical access to the collieries located on the roads mentioned.

Q. None of them are, or never have been competitors of the Philadelphia and Reading Railway Company for the traffic originating at those mines? A. Not for the carriage of that coal; no.

Q. Does the Philadelphia and Reading Railway Company reach any of the collieries located on the lines of the Panther Creek Railroad or other lines of railroad of the Lehigh Coal and Navigation Company or the Central Railroad Company of New Jersey? * * * A. With the exception stated, the Philadelphia and Reading Railway Company has no physical connection of its own lines with any of those lines mentioned.

Q. They are not competitors? A. Not for the carriage of the traffic on the lines of each other.

Q. They are not then competitors of each other for the anthracite coal traffic originating at the collieries on the lines of each other in the anthracite coal regions? A. No; they are not competitors for the carriage of that coal traffic.

Q. The competition that does exist in respect of this anthracite coal is the competition in the various markets of the producers of the coal with each other? A. It is a competition of markets.

Q. It is wholly a competition of markets and not transportation? A. That is correct. With the exceptions noted—rather exceptions.

Q. Those conditions are not competitive as you describe them, are they? A. A few thousand tons of coal owned by individual operators may be shipped by one or two roads that have access to the same mines.

Q. That is insignificant? A. Very insignificant; not a quarter of one per cent. of the total production.

Q. The few individuals are those whom you have named? A. Yes, sir.

Q. And under the circumstances which you have men-

tioned? A. Yes, sir. I mean the exceptions noted at Morea. There is a little coal that is free to go by the Pennsylvania Railroad, or the Lehigh Valley Railroad, or the Reading Railway Company from Morea.

Q. That is governed by property conditions so far as the Philadelphia and Reading Railway Company is concerned? A. Partially so. It is so insignificant that it cuts no figure in the real competition.

Q. I want to call your attention to your knowledge of the coal regions generally, regardless of the Philadelphia Coal and Iron Company's properties, I mean the coal regions tributary to the Philadelphia and Reading Railway Company, and I will thank you to give a brief general description of the method and manner of gathering coal from the mines to the trunks and thence to the scales where they are weighed and shipped, and give some account of the difficulties and expense of gathering the coal and bringing it to the point where it enters upon its final journey for the service of transportation. A. The most distant colliery from the weighing scales of the Philadelphia and Reading Coal and Iron Company is North Franklin. The distance that that coal goes to the weighing scales, when it comes from the Mahanoy Plane is about twenty-five miles to St. Clair weigh scales. It is gathered and goes to the Shamokin yard, and is thence handled to the foot of Mahanoy Plane, a distance of about fifteen miles.

Q. In process of its travel from the Shamokin yard to the Mahanoy Plane, what obstacle does it overcome, and how must it be handled? A. The engine which brings it from Treverton to Shamokin carries it to Shamokin yard. It is then carried up a steep grade to the top of the hill east of Shamokin. It is then handled by way of Ashland and Gordon over very steep grades, usually two or three engines used to carry a train load of about twenty cars, and it is carried to the foot of Mahanoy Plane and shifted so that the Plane engines can catch the car. Usually they take two or three cars to the top of the Plane, an ascent of five hundred feet in a distance of less

than a mile, and when it gets to the top of the Plane it has to be shifted into trains, and is carried down Broad Mountain, and is put in the yard at St. Clair, and passed over the weigh scales, and then put into a yard below St. Clair, and that is its billing point. It is then billed to its destination.

Q. That is the first time at which its destination can be determined? A. Yes.

Q. Where it shall go? A. Yes. The orders for its distribution are given to weigh scales. The weight is not determined until it goes to the weigh scales. In most of the other regions the collieries have scales at the colliery, but in the case of the Reading the coal is concentrated at the weigh scales. It is often handled two or three times on account of there being steep grades and a very mountainous region. Then it is billed from the weigh scales to whatever may be its destination. The orders for the distribution of the coal are sent to the weigh scales.

Q. So that the actual service of the transportation to the market begins at the weigh scales? A. The actual calculation for the rates per ton per mile begins at the weigh scales. A service is performed before this coal comes to the weigh scales, which is very difficult on account of the mountainous character of the country, and the cost of gathering it to the scales, is, in many instances, greater than the cost of transporting it from the weigh scales to its final destination. Particularly is that the case when it comes to the point at Port Richmond.

Q. Does that remark apply to all the collieries which lie west of Locust Summit? A. Yes.

Q. How many of them are there in there, both individual and company collieries? A. About ten west of Locust Summit altogether, large and small. As you come nearer to the scales the handling is of a less distance and it is not handled so many times, but it is repeatedly handled.

Q. East of Locust Summit on the main line over which this coal is carried from west of Locust Summit in the

Shamokin district, are there many operations tributary without coal branches, or not? A. There are several of them on the main line. Most of them are on branches.

Q. I mean between Locust Summit and Ashland, and the foot of the Plane? A. There are several operations.

Q. What are they? A. They all have switches of greater or less length.

Q. That do not have coal branches proper, I mean. Are there any? A. St. Nicholas is on the Mahanoy line. Alaska is on the main line.

Q. Alaska has to go over Locust Summit? Alaska is slightly east of Locust Summit. It goes up a very steep grade from Ashland to Girardville and Mahanoy Plane.

Q. There is another summit east of Locust Summit? A. Yes, sir. The grade from Gordon up to Girardville. I do not know the number of feet to the mile, but I should say over a hundred feet to the mile at least up to Mahanoy Plane.

Q. Eliminating those which have to pass over those grades and between the foot of the grade and the foot of the Plane, are there any material operations which will govern your statement as to the relative cost of gathering? A. All of those, even that are at the foot of the Plane, have to be handled several times, because they have to be switched to the Plane, hauled over the Plane, switched into trains, carried down the mountain, shifted into the yard, weighed, shifted again to be put into trains to be carried to final destination.

Q. Give some description of this Shenandoah branch on which many collieries are located. A. Shenandoah branch collieries shift around the point of the mountain, reaching the main line just slightly east of Bear Ridge, and then go eastward on the main line to the foot of the Plane, and then go through the same process of going up over the Plane, shifted for the Plane, shifted from the Plane, carried down the mountain, put into the yard, weighed and so forth.

Q. What sort of a curvature is there on that Shenandoah branch? A. The curvature is rather sharp, but, so

far as bringing the loaded cars down the Shenandoah branch main line, that grade is down hill.

Q. It is favorable to the traffic? A. Yes, sir.

Q. How is it about the reverse direction for distributing the empties amongst the collieries? A. It is a very steep grade, as all the grades are in the region, being very mountainous.

Q. And expensive to operate? A. Yes.

Q. After the coal gets down to the main line, the same process of handling to the Plane and over the Plane has to be gone through with that you have described in respect to the coal coming from west of Locust Summit? A. All the coal north of the mountain, which is two-thirds of the total amount produced by the Philadelphia and Reading Coal and Iron Company, has to be handled over Broad Mountain, over the Mahanoy Plane, and handled as many times as heretofore described.

Q. That applies also to the few collieries that lie east of Mahanoy City and east of the foot of the Plane? A. Yes. The coal from collieries east of the Plane is carried westward to the foot of the Plane and then carried over the Plane in the same way as those west of the Plane.

Q. Go down to the other side of the Broad Mountain and get into Minersville and Lebanon and Tremont district, and describe the movement of the coal as it comes to the Cressona yard? A. The most distant collieries there are Brookside, West Brookside, Goodspring and Lorberry. They are about fifteen to twenty miles from Cressona yard, which is just a connection with the main line from Pottsville. There are eight or ten collieries between Tremont and Cressona yard on branches in the south of the mountain region. Cars from all these collieries are collected and carried to the Cressona yard. They are handled with somewhat less difficulty than those north of the mountain, because the grades are, in most instances, downhill to Cressona or Schuylkill Haven yards.

Q. But the reverse service for the empties —— A. The reverse service for the empties is in several instances even more difficult than it is on the north side.

Q. How about the Lincoln Colliery, and the long coal branch, the high curvature that leads to that? A. Lincoln Colliery is quite difficult of access for empty cars. They can only carry to it five or six empty cars with one engine.

Q. In getting this coal to the markets kindly put on the record the number of different kinds or qualities of coal, and the number of sizes of coal which it will make by multiplying the two. A. This is shown already by the records, that there are nine sizes of coal. Hard White Ash, Free White Ash, Lorberry, Lykens Valley, Red Ash and Shamokin.

Q. Taking the two together, both as to size and other varieties, how many varieties of coal are there to be handled at the yards or scales? A. There are six kinds in nine sizes.

Q. That makes fifty-four different kinds of coal? A. Fifty-four.

Q. At the scales describe the service of shipping and arranging these various kinds of coal to get them to the market to the purchaser who has ordered them, and to arrange them in trains to go to destination? A. All the orders for shipment of coal or sales are sent to the scales. What they call shippers, men who give the destination of the cars, are stationed at the scales. The coal has to be weighed car by car, necessarily the switch engines must take this coal as it comes in from the collieries and shift the cars from the scales one by one, and they pass to the distributing yards below the scales, and they are way-billed from that yard below the scales. Necessarily they have to be shifted into trains to go to the destination to which the coal is consigned. That is the usual practice of shifting cars. If it was all one product, like bituminous coal, any car could be applied on a sales order, but if there are fifty-four different kinds and varieties, it is a little bit more difficult to make your application. Necessarily there is more switching service and work to be performed than if it was simply like bituminous coal. Then, it has to be distributed to many destinations. It

must be put in a train that is going to or towards that destination always, and, frequently, it has to be shifted apart again at short distances in order to keep the trains going. You cannot let the coal stay there; it would block the yard. It has to be carried on to its destination. Sometimes it is handled and switched three or four times on the Reading Railroad. If it is going to Harrisburg, it goes twenty-five miles to Reading, and then it is shifted westward. If it is going to New York, or Baltimore, or Washington or various other destinations, it has to be handled very many times on the Reading Railroad. If you look at the map, you will find that our system is a very complicated one. It does not run over one main line. It is not an easy business to manage, either from a commercial or from a freight traffic standpoint, or from a transportation standpoint. Therefore, it would naturally be entitled to a higher rate per mile than in the case of coal carried, like bituminous coal, very long distances over one straight line, with comparatively few handlings of each separate car.

Q. Take the St. Clair yard as a specimen, and describe the nature of the requirements that the railroad is required to maintain in order to accommodate this method of handling and distributing the coal? A. This yard almost of necessity has to be kept moving all the time. We frequently handle through that yard twelve to fifteen hundred cars of anthracite coal alone, leaving out of consideration domestic freight and other traffic which passes through the yard. It has to be operated very quickly or it will fill up. If the arrangements for sale and distribution and handling are not expeditiously and promptly and properly done, it will involve a very heavy expense for blocking the yard, undertaking to switch the cars in order, if it once gets confused. Necessarily, it is a very expensive operation to handle and work the yard.

Q. None of this coal that we are speaking of that is produced from the Coal and Iron Company is handled at the Tamaqua scale? A. When there is any interruption to the Plane, as there sometimes is, the coal necessarily

has to be passed through the Mahanoy tunnel and Plane to the Tamaqua yard, and there are one or two collieries at the mouth of the Mahanoy tunnel, the coal of which goes to Tamaqua yard.

Q. When the coal leaves the Tamaqua yard it runs down this Little Schuylkill River Railroad down the Little Schuylkill to Port Clinton, does it not? A. Yes.

Q. Where it, for the first time, strikes the main line? A. Yes.

Q. The bituminous coal traffic that you handle from the North, from the Beech Creek, Rochester and Pittsburgh and Clearfield regions, does not come through this territory, but comes down the Catawissa Railroad? A. It comes down the Catawissa Railroad to Tamaqua yard, and down to Port Clinton and strikes the main line at Port Clinton.

Q. So that bituminous traffic that is handled on the Reading line does not go over those heavy grades? A. No, sir; the favorable grades are in the Catawissa region.

Q. After you get to the top of the favorable grade of Lofty Mountain and Catawissa Mountain, you have practically water grade all the way down to Philadelphia? A. Yes, sir.

Q. You can haul as much loaded freight down as you can get empties back, I suppose, with the same power? A. Yes. From the mountain to Philadelphia.

Q. In connection with these same proportions of size and quality, I would like you to give some description of the terminal service at Port Reading for trans-shipment by water? A. There is the same difficulty in separating the numerous sizes of anthracite coal from each other in at the terminal as there is at the yards, where it is gathered for billing purposes. Bituminous coal being usually one or two kinds, it does not require anything like the amount of shifting that is required for anthracite.

Q. In the first place, there is required at the foot of the wharf, so-called, a yard somewhat similar, but probably not so extensive, as at the scales, is there not, where the loaded train stops and leaves its loads? A. Yes. The

terminal yards are about as large as the scale yard. At Port Richmond, for instance, a yard holds about five thousand cars. Either one of these yards holds that many. At Port Richmond the yard has a mile of river front.

Q. The service of shifting from this terminal yard over the wharf to discharge the car into the vessel and discharging it into the vessel is also difficult and expensive, is it not? A. It is.

Q. For the same reason? A. For the same reason.

Q. Selecting and shifting and collecting the coal for a particular boat which is chartered by a particular owner, you have to select the particular cars that belong to that owner in order to get them into the vessels? A. You do.

Q. Which is an expensive service relatively? A. Yes.

Q. As compared with the service for handling bituminous coal? A. Yes. Because of the increased number of sizes.

Q. What is your understanding, as the traffic officer, of the relations of this gathering charge and expense in the interchange of anthracite traffic with connecting roads to reach their territory? Is there or is there not an arbitrary allowance made, as a rule, for the gathering charge? A. There is an arbitrary allowance made in all instances for the gathering charge.

Q. Which is about what, in respect of what these gathering charges you have been describing are? A. Do you mean the amount of the gathering charge?

Q. Yes. A. It is thirty cents a ton for the coal coming this way, where the distances are greater. I mean coming over the mountain, coming East. When it comes West it is not hauled over the Plane, nor it is not hauled so great a distance. The charge there is fifteen cents. When it comes eastbound it is thirty cents. The total rate is prorated.

Q. In prorating on a mileage basis, is the mileage from the scale what governs the proportion to be demanded by the railroad company, or the total mileage from the mines? A. The gathering charge is supposed to cover the rate from

the collieries to the scales. It is billed from the scales on the mileage basis.

Q. And the basis of mileage for the Philadelphia and Reading Railway Company is from the scales? A. From the scales.

Q. The shipping point? A. Yes, sir. The basis for computation of the mileage for division of rate, as well as the charge per ton per mile, is computed from the scale.

Q. When this expense of gathering is so much greater than the thirty cents a ton which you have stated it to be, why do you not require the connecting railroads to make a fair allowance for this gathering charge instead of thirty cents a ton? A. We get from them as much as they will allow us.

Q. You cannot get them to concede more? Is that the idea? A. No. They do not want to pay it.

Q. You would get more if you could, wouldn't you? A. Yes. We frequently tried to.

Q. Do you not think you ought to get more than you do? A. Yes. In many instances we ought. This gathering charge is put on a fixed basis for all the collieries just as the rate is the same from all the collieries. In some cases it is much more difficult to gather than in others. For instance, it would cost a great deal more to gather from North Franklin, on account of the distance to the St. Clair yard, than it would if the colliery were right near to the St. Clair yard. But the gathering charge is uniform.

Q. It is averaged? A. It is made uniform.

Q. Is that supposed to represent a fair average or is it more or less than a fair average, in your opinion, as a practical man? A. I think it costs all the Reading gets for it.

Q. Is it not a fair average, or is it less than a fair average, in your opinion, thirty cents a ton? A. I think it is probably less than a fair average, because it is a very costly service.

Q. So if you assume for the gathering charge, before considering the rate per ton or the rate per mile, thirty

cents for gathering, it is not an excessive assumption? A. It is not.

Q. What is taken out of the rate to cover the transshipment of the coal from the terminal roads over the piers into vessels to the terminal property? Fifteen cents, you say? A. Yes, sir. Fifteen cents is the usual charge for passing coal over the piers into vessels.

Q. Deducting from the tariff rate which represents the service of the transportation from the scales to the terminal wharf, the thirty cents a ton for gathering charge, and the fifteen cents a ton for shifting and discharge into the vessels leaves what the company receives actually for its service of transportation? A. Forty-five cents from a dollar and fifty-five cents leaves a dollar and ten cents for service of transportation to New York waters from the scales.

Q. On prepared sizes? A. On prepared sizes.

Q. A similar calculation has to be made for the smaller sizes? A. From the lesser rate on steam sizes.

Q. So as to ascertain the rate per ton and the rate per ton per mile, this balance is the basis on which you have to figure? Is that so? A. Yes, sir.

Q. Before going into that subject I would like to call your particular attention to the relative increase of the anthracite coal traffic of the Philadelphia and Reading Railway system, as compared with the bituminous and merchandise traffic, from the beginning of the operations of the Philadelphia and Reading Coal and Iron Company after the receivership, down to and including the period when your services were ended. I hand you, for the purpose of refreshing your recollection, a paper with which you are familiar, which bears on that subject. We are now beginning with the first seven months of the operation of the P. & R. Railway Company proper, which covers the time between the first day of December, 1896, when they took possession, to and including June 30th, 1897, which was the end of the fiscal year, and following down to the end of your service. Kindly state in a brief, general way, the proportion of increase

of the anthracite tonnage, of bituminous tonnage, and merchandise respectively. A. The anthracite tonnage for the first full year, 1897-1898.

Q. That is from June 30th, 1897? A. No, sir. I am taking the full year for comparative purposes.

Q. This is the fiscal year? A. From 1897 to 1898 is the first fiscal year.

Q. First full fiscal year? A. Yes, sir. The anthracite tonnage was 9,464,000 plus. For 1907-8, was 13,537,000 tons plus, an increase of anthracite business or tonnage of about sixty per cent. The bituminous coal for 1897-8, in the first full fiscal year, was 3,517,000 tons. For the last year, 1907-8, was 10,816,000 tons, substantially an increase of three hundred per cent. The merchandise tonnage for 1897-8, the first fiscal year, was 9,862,000 tons. For the last year it was for 1907-8, 12,249,000 tons. That is less than the previous year. When I left it was 24,000,000 tons, an increase of substantially a little over two hundred per cent.

By Mr. Todd:

Q. Before you go on, may I ask whether those tons in each case are expressed in tons of the same number of pounds? A. A ton of coal, in the State of Pennsylvania, is a gross ton, twenty-two hundred and forty pounds. A ton of coal, whether anthracite or bituminous, is, in Pennsylvania, twenty-two hundred and forty pounds, a gross ton. The merchandise tonnage is expressed in net tons, but the comparison of increase is based on the same figure in each case.

Q. Which is two thousand pounds? A. No, sir, it is twenty-two hundred and forty for coal and two thousand for merchandise.

By Judge Campbell:

Q. Now I ask you the same question in respect to the revenue. Before going into that subject I would like to call your particular attention to the relative increase of the anthracite coal traffic of the Philadelphia and Reading Railway System as compared with the bituminous and merchandise traffic, from the beginning of the operations

of the Philadelphia and Reading Coal and Iron Company after the Receivership, down to and including the period when your services were ended. I hand you, for the purpose of refreshing your recollection, a paper with which you are familiar, which bears on that subject. We are now beginning with the first seven months of the operation of the P. & R. Railway Company proper, which covers the time between the first day of December, 1896, when they took possesion, to and including June 30th, 1897, which was the end of the fiscal year, and following down to the end of your service. Kindly state in a brief, general way, the proportion of increase of the anthracite tonnage, of bituminous tonnage, and merchandise, respectively. A. As to the revenue for the first fiscal year, which was 1897-8, the revenue from the carriage of anthracite coal was $8,517,000 plus. For 1907-8 was $13,026,000.

Q. Give the percentage there of increase. A. Fifty-two per cent. The bituminous coal for 1897-8, the first full fiscal year, was $1,414,000 plus. For 1907-8 was $5,551,000, an increase of two hundred and ninety-two per cent. The merchandise for the first full fiscal year was $7,163,000. For the last year, 1907-8, it was $13,502,000, an increase of eighty-eight per cent.

Q. So that the large increases in revenue and tonnage, shown by the annual reports of the railroad company, put in evidence by the Government, is to be mainly accounted for by the large increase in tonnage and revenue derived from the carriage of bituminous coal and general merchandise? A. Yes, sir.

Q. The establishment of this increased business grew up, to a large extent, under your own administration, did it not? A. It did, yes, sir.

Q. Go on and state on the record what was done, what methods were pursued to accomplish this great result. A. Almost immediately after I was appointed second vice-president of the Philadelphia and Reading Railway, in charge of its freight traffic, I started out on a tour of inspection as to the means of increasing the bituminous

coal traffic of the Reading Road. Certain of its coal traffic was, at that time, derived from the mines on the line of the Beech Creek Railway In making a trip up over the road, in which I persuaded the officials of that company to accompany me and provide a special train, and give me the information at their service, I developed the fact that they had an inadequate supply of coal on the line of that road to supply the industries on the line of our road. I came home and reported that fact to the president, and every other source of supply. The Reading Railway had large iron and other industries on the line of their road that consumed large quantities of bituminous coal, and I found their supply was inadequate to enable them to expand. I went out on the line of the then West Virginia Central and Pittsburgh Road.

The Western Maryland Railroad had a line up the side of the Blue Ridge on an impracticable route, and I found that there was sufficient coal to be found in West Virginia, from which they could derive a supply, and means of transportation were not adequate, that they could not haul that coal up the side of the mountain and down again, and let it go through the Cumberland Valley, to Hagerstown. I came home and reported the fact to our people, and asked them to build a line of road, which is now the New Western Maryland Railroad. I took up the question of rates with the Baltimore and Ohio Railroad, and pointed out this route. They seemed indifferent at the time to develop this traffic. Their subordinate officials did not seem to me to rise to the occasion at all. Their Coal Freight Agent turned me down, and their Traffic Manager turned me down, and I had to go to the Receivers. I afterwards went to Mr. Cowen and Mr. Murray, who were the Receivers of the road, and told them they had an abundant supply of coal and very little demand; that we had a great demand for coal and very little supply. It seemed to me a piece of folly to allow that condition of affairs to continue. Gradually the business was developed. This new line was built. Cars were furnished, through efforts made for that purpose,

and the business was developed and increased very rapidly. It aided in the development of the iron industries on the line of the Reading Road, and helped to build up their iron and other traffic, besides developing the bituminous coal business. To that cause is largely due the increase of traffic on the Reading Road, much of it coming through the Cumberland Valley to the Reading at Shippensburg. The business at Newberry Junction, on the Northwestern Route, where we connected with the New York Central Road, was, at that time, perhaps five or ten times what it was at Shippensburg, and to-day the business coming to the Reading Road at Shippensburg is the greatest, in volume, of any junction point it has.

By Mr. McReynolds:

Q. Where is Shippensburg? A. In Pennsylvania, about twelve miles from the Maryland and Pennsylvania line.

By Judge Campbell:

Q. And connects with both the Cumberland Valley and Western Maryland? A. Yes, sir.

Q. You connected at that point with both the Cumberland Valley and Western Maryland? A. Yes, sir, the Cumberland Valley runs to Harrisburg. We connect with it at Shippensburg, too.

Q. There is to-day, in both directions, Southwest and West, an opening of the territory outside of the West Virginia Central? A. Yes, sir, we opened up the line of the Baltimore and Ohio Railroad. The access to the Southwest is over the line of the Norfolk and Western and the Chesapeake and Ohio Railroad.

Q. That was mainly for merchandise tonnage? A. Yes, sir, mainly for merchandise.

Q. As to the bituminous coal tonnage? A. The bituminous coal tonnage comes largely from the line of the Baltimore and Ohio Railroad. They get quite considerable volume of the line over the Western Maryland.

Q. In addition to the West Virginia Central territory, you have the Fairmont territory, on the B. & O., and

also the Somerset region in Pennsylvania, which is tributary to that? A. All the lines of the B. & O. Road, their Connellsville Branch, their line to Pittsburgh.

Q. And as to the Western connection there was brought also through this negotiation of yours, into our field, I take it, the coal originating on the line of the Buffalo, Rochester and Pittsburgh. A. The business from the line of the Beech Creek Railroad that came from the Buffalo, Rochester and Pittsburgh, over the line of the Beech Creek Road to the Reading at Newberry Junction, that business remained in about the same volume it had been. It increased rather than decreased.

Q. There was also a considerable bituminous coal tonnage originated on the lines of the Pennsylvania Railroad, with certain qualities of coal that were desired in our local territory. A. The Pennsylvania Railroad never allowed the bituminous coal from their line of road to come on to the Reading Railroad except at its local stations.

Q. The local stations on the line of the Philadelphia and Reading Railroad? A. Yes, sir.

Q. If you have anything particularly to tell us about what occasioned the growth and development of the merchandise business also, I would be glad to have you state it. A. Prior to the time of my appointment as vice-president of the railroad, the Philadelphia and Reading Railway had very little export or import traffic. Aided by some of the active shipping merchants of Philadelphia, we induced the opening of several lines of trans-Atlantic steamers, the first one of which ran between Philadelphia and London, afterwards another between Philadelphia and Glasgow, one between Philadelphia and Rotterdam, and one between Philadelphia and Hamburg, then between Philadelphia and Copenhagen. As a result of the establishment of these various lines of steamers, a very large export and import traffic was built up, nearly all of which traffic was gathered and distributed in the West, and hauled over the lines of our road to those steamers, which helped to build up the merchandise traffic on the Reading Railway.

Q. How about the increase in improvement of docks and wharves for the accommodation of export and import traffic? A. Every steamer line we established required, as of necessity, a place where it could receive and discharge its cargo, and a dock was built and assigned for that purpose to each steamer line as it was established.

Q. From your knowledge of the territory tributary to the Philadelphia and Reading Railway Company proper, and its various railroad connections, I would like you to describe the relations in the matter of interchange of traffic which existed between the Central Railroad Company of New Jersey, and the Philadelphia and Reading Railway Company, prior to January, 1901. You can use the maps there, and point out the various points of connection, routes of traffic, and so forth, beginning at the northwestern end and coming around until you strike the road connecting the B. & O. Give a brief, general description. This is the condition prior to January, 1901. A. Outside of the coal traffic the Reading Railway has no access to the business of New York, except by passing over some other lines to New York harbor. The line over which most of the, in fact nearly all of the traffic of the Reading Railway passes to New York, is the line of the Central Railroad of New Jersey, from Bound Brook to New York. It draws its New York westbound traffic from that line, for Philadelphia and points south thereof, over the line of the Central Railroad of New Jersey, from Jersey City to Bound Brook.

Q. And the reverse? A. The traffic which it gathers on its own line from the south and southwest——

Q. And connections? A. And from its connections south, passes over the line of the Central Railroad of New Jersey, from Bound Brook to New York, in the opposite direction. That traffic is very large, both passenger, freight and merchandise.

Q. You are describing conditions which existed prior to 1901? A. Yes, sir, that condition existed prior to 1901, and since 1901. It exchanges also a very large amount

of traffic to and from New York waters, which passes over the line of the Central Railroad of New Jersey, to Allentown; then west by Reading, and on west to Shippensburg, and over the lines of the Western Maryland, and Norfolk and Western, and Baltimore and Ohio, to the West. It carries, in the reverse direction, a very large traffic. That volume of traffic exchanged at Allentown is much larger even than that which is exchanged at Bound Brook. They carry a very heavy bituminous coal traffic from the line of the Baltimore and Ohio Railroad, and all their western fast freight lines and other business, a large amount.

By MR. MCREYNOLDS:

Q. Are you speaking prior to 1901 still? A. Yes, sir, that existed both before and since 1901. It has increased through the formation of the Western Maryland new line, which enabled it to carry its traffic more expeditiously. It has been greater in volume in recent years than early, but it existed both prior and subsequent to 1901. The Philadelphia and Reading Railway exchanges a very large amount of traffic coming from the New York Central lines, from the West, which comes to the Reading at Newberry Junction and goes over the Catawissa line, and is exchanged at Tamanend Junction or Hauck's Switch. This coal from the Buffalo, Rochester and Pittsburgh Road, grain and merchandise of various kinds, the fast freight line business to and from the West, merchandise from New York over that road, west, is distributed especially over the New York Central lines.

By JUDGE CAMPBELL:

Q. Are there not also Erie connections at Corning for points west? A. We connect in the traffic with the Erie Road, what we call the Scranton, Erie business, over the line of the New York Central Road to their junction with the Erie. The business goes in both directions in that case, the same as in the others. There is some business that we exchange with the Central Railroad of New Jersey at Tamaqua, but that is less in volume. There is another junction point of the Atlantic City Road with the

Central Jersey, where more or less business is exchanged between the two lines.

Q. At Winslow Junction, in New Jersey? A. At Winslow Junction in New Jersey.

Q. Let me call your attention also to a connection at Bethlehem. A. I failed to mention the junction point of the North Penn Railroad with the Central Railroad of New Jersey at Bethlehem, for points in the upper anthracite region, Scranton, Wilkes-Barre, and along there.

Q. Running down on the line of the Central Railroad of New Jersey? A. Yes, sir, in the Lehigh Valley. A large amount of business is exchanged with the New Jersey Central in both directions at Bethlehem.

Q. That existed prior to 1901? A. Prior to and subsequent to 1901.

Q. How about the Perkiomen connection near Allentown? A. The Perkiomen Junction at Allentown is an alternate route with the Bethlehem line, and the grades are a little more favorable on the Perkiomen Road, and that is used for heavy traffic there. It is merely an alternate route with the Bethlehem line.

Q. It is a point reached for the exchange of their traffic between the two systems? A. Yes, sir.

Q. By way simply of illustration, not going into all the detail, but taking the bituminous traffic alone, the interchange by way of Park Junction with the B. & O. in Philadelphia, by way of Hauck's Switch, of the Beech Creek and Clearfield, and Buffalo and Rochester and Pittsburgh, and via Allentown and the Shippensburg connection, kindly state the growth of that change from 1900, prior to the acquisition of the shares of the Central Railroad of New Jersey by the Reading, up to and including 1908. Show the nature and extent of that interchange of traffic. A. Via Park Junction.

Q. Describe what that means. A. Park Junction is a connection of the Baltimore and Ohio Railroad with the Philadelphia and Reading Railway in Philadelphia. We always speak of that business as the Park Junction Route business. The first full fiscal year shown here, which is

1901—this is bituminous coal—was 488,000 tons. 1907-8 is 1,503,000 tons.

Q. In the meantime there has been a gradual increase? A. Yes, sir, and has gone from the one figure to the other by a gradual process. By Hauck's Switch ——

Q. Describe what that means. A. Hauck's Switch Junction is a connecting point between the Central Railroad of New Jersey and the Philadelphia and Reading Railway over which the traffic from the Beech Creek Road to Central Jersey points, east of Hauck's Switch, including New York City, comes. This traffic in 1900 was 944,000 tons. In 1907 was 1,197,000 tons.

Q. Go on to the Allentown. A. The bituminous coal coming by Allentown from the B. & O. was in 1900, 165,000 tons. In 1907-8 was 1,013,000 tons.

Q. In the meantime there has been a gradual enlargement and increase at each of these points? A. Yes, sir, every year there was an increase until the last year.

Q. I wish you would look at that map, and look carefully, and trace the main lines of the Central Railroad of New Jersey, so you can get a clear-minded comprehension of it, and the main line traffic of the Philadelphia and Reading Railway System, in relation to each other, if you have not got that clearly in your mind? A. I have it distinctly in my mind.

Q. Are those lines of railroad practically, or substantially parallel or competing with each other, for the class of business you have described, or any other than this mere incidental business? A. The business interchanged between these lines is probably from fifty to one hundred fold greater than that for which they compete.

Q. Answer that first question. Are they at all parallel? One of them runs along one valley, at the bottom of one water shed, and the other in a totally different one. A. They compete for an extremely limited amount of traffic.

Q. At these local points of connection? A. Yes, sir.

Q. These local points of connection you have mentioned? A. Yes, sir, they exchange with each other a volume of business, as I have stated, probably fifty fold greater.

Q. Fifty fold? I thought it was several hundred fold? A. I have not gone into the calculation. The one is an insignificant thing, and the other is a business of a tremendously large volume.

Q. Are these through routes, over which this through traffic is interchanged, competitive by any route controlled by one line, with the routes controlling the other? A. Only in an insignificant degree.

Q. They are complementary to each other, are they not? A. They supplement each other.

Q. Without the use of the Jersey Central terminals, if they were in the hands of parties not interested in, or antagonistic to the Philadelphia and Reading Railway System and its ownership, what would be the consequence? A. The Philadelphia and Reading Railway might be largely shut out of this business to and from New York, if they were in the hands of other companies.

Q. And the traffic which is naturally tributary from Reading territory, to and from New York, that would be driven to other lines? A. Largely, yes, sir.

Q. Since the acquisition of the major portion of the shares of the Jersey Central Railroad Company by the Reading Company, one of the defendants here, has there been any change in the organization of the two roads, the Philadelphia and Reading Railway, and the Jersey Central Railroad, as to their being, when used, independently and separately? A. I think they fight each other harder now than they did before.

Q. Has there been any change in the personnel, so that the Reading people control and undertake to operate the New Jersey Central Company in regard to the distribution of the traffic? A. They have the same president.

Q. Is that the only exception? A. That is the only exception.

Q. State whether the Jersey Central maintains an absolutely and separate and independent organization? A. It does, yes, sir.

Q. The accounting departments are all separate? A. Yes, sir.

Q. The operating departments absolutely separate? A. They have the same purchasing agent and same president.

Q. The purchasing agent is not part of the operating department, is he? A. No, sir.

Q. He does not control shipments? A. No, sir, he does not. So far as their operating department is concerned, it is entirely separate. So far as their traffic department is concerned, it is entirely separate. So far as their accounting department is concerned, it is entirely separate. They have the same president, and they have the same purchasing agent. That far, they are connected with each other.

Q. Referring now to your New York tidewater rates, Port Reading, the gathering charge, and the shipping expense, to which you have referred already in your testimony, the rates per ton, and the rates per ton per mile, the average rates per ton, and the average rates per ton per mile from the year 1903-4, to 1907-8, what do they show as to the average rate per ton? A. Is this for anthracite coal?

Q. Anthracite coal wholly. A. A slight decrease.

Q. Shipments of anthracite coal at Port Reading? A. They show a slight decrease.

Q. Tell us what it is. What is the average rate per ton in the first period of 1903-4? A. One dollar and one cent per ton; 1904-5 ninety-nine and eight-tenths cents per ton; 1905-6, ninety-seven and seven-tenths cents per ton; 1906-7, ninety-six and five-tenths cents per ton; 1907-8, ninety-two and five-tenths cents per ton.

Q. State the rates per ton per mile during these several periods? A. For 1903-4 it is six and five-tenths mills per ton per mile; 1904-5, six and four-tenths mills per ton per mile; 1905-6, six and three-tenths mills per ton per mile; 1906-7, six and two-tenths mills per ton per mile; 1907-8, five and four-tenths mills per ton per mile.

Q. Calling attention to the reduction of the average rate per ton to the reduction relative to the average rate per ton, and the average rate per ton per mile, since the

tariff rates have been comparatively the same, how do you account for this reduction? Is it on account of the great increase in proportion of the smaller sizes carrying this smaller rate? A. The rate on the smaller sizes is the lesser rate, and the greater proportion of lesser sizes that is carried, is what reduces the rate. There being an increase in the smaller sizes, the average rate is thereby reduced.

Mr. Reynolds offered in evidence statement, being a series of excerpts from the annual report of the Pennsylvana Railroad and the Baltimore and Ohio Railroad and the Pennsylvania Company, the lines West.

The Government notes objection to this statement, on the ground of irrelevancy and immateriality.

The Government also objects to the quotation on page 19. of the report of the Pennsylvania Railroad Company for 1899. on the ground of incompetency.

The statement is as follows:—

The Pennsylvania Railroad Company Annual Report for the year 1899 shows, on page VII that Sutherland M. Prevost was third Vice-President of that Company.

Page 6 of that report contains the following statement:

"The entire cost of the securities of other corporations held by your company December 31st, 1899, was $120,362,425.97."

On page 19 of that report appears the following announcement of a new policy with the reasons for its adoption:—

"While the growth of your traffic and its successful movement are subjects for congratulation, your Board have to report a further reduction in the average ton-mile rate. For years the compensation of the trunk lines for moving freight traffic has steadily decreased. Had the railway companies not been able to meet the diminution in the ton-mile rate by a corresponding reduction in expense, disastrous results must have followed. But there is a limit, and it cannot be far off, to the possible lessening of the cost of movement. The only alternative is to

arrest the reduction in revenue, which has been largely brought about by apparently uncontrollable conflicts between the railway companies, and between rival communities. It must be admitted that the situation is complicated. The problems involved in dealing with traffic questions covering so vast a territory, and affecting so many diversified interests, are troublesome and intricate, but they are not incapable of solution and it is believed that by earnest and united efforts the difficulties in the way may be met and overcome. With this end in view, and to establish closer relations between the managers of the trunk lines, it has seemed wise to your board to acquire an interest in some of the railways reaching the seaboard."

On the statement of stocks owned by the Pennsylvania Railroad, appearing at page 26 of the report, it will be noted that the company then owned no B. & O. stock, no Chesapeake and Ohio stock and no Norfolk and Western stock.

On page 26 of the Pennsylvania Railroad Company's Annual Report for the year 1900 it will be observed the statement of stocks owned shows that in the interim it had acquired sixteen million dollars par value, of Baltimore and Ohio Railroad, preferred; seven million dollars, par value, of Chesapeake and Ohio Railway, common, and a total of twenty million dollars, par value, of Norfolk and Western Railway Company, common and preferred. This acquisition is referred to in the following language at page 21 of this report:—

"A reference to the Balance-Sheet and List of Securities will show the interests acquired during the year by your Company in several of the railways reaching the seaboard, and the amount of temporary collateral obligatons issued in payment therefor. The results of those investments have been satisfactory."

On page (ix) it will be noted that Mr. Sutherland M. Prevost was still third vice-president of the Pennsylvania Railroad Company.

In the B. & O. report for the same year on the first page it is noted that Sutherland M. Prevost was elected

to the Board of that railroad company on February 1st, 1900.

The 1901 report of the Pennsylvania Railroad Company shows on page 26 that the company then owned stocks of the B. & O. R. R. to a total par value of well in excess of thirty-four million dollars and Chesapeake and Ohio stock in excess of ten million dollars and Norfolk and Western Railway Company's stock of almost twenty-six million dollars.

From the list of officers and directors on page (ix) of that report it will be noted that John P. Green was first vice-president, Sutherland M. Prevost, third vice-president, Samuel Rea, fourth vice-president, and James McCrea, a director.

The report of the Pennsylvania Company for the same year, 1901, shows that James McCrea was first vice-president of the Pennsylvania Company, as well as a director of that company.

Page 46 of that report contains the following announcements:—

"On June 1st, Mr. L. F. Loree, having been elected president of the Baltimore and Ohio Railroad Company, resigned as fourth vice-president of this company. Mr. G. L. Potter, having been appointed general manager of the Baltimore and Ohio Railroad Company, resigned as general manager of this company."

The report of the Baltimore and Ohio Railroad Company for 1901, shows that included among its directors were John P. Green, James McCrea, Sutherland M. Prevost, and Samuel Rea, and that its president was L. F. Loree and its general manager, G. L. Potter.

Page 11 of that report contains the following announcements:—

"On May 28th, 1901, Mr. L. F. Loree was elected President of the Company, effective June 1st, Mr. John K. Gowen having tendered his resignation, effective that date.

"Mr. Geo. L. Potter was appointed General Manager, effective June 1st, 1901."

The report of the Pennsylvania Railroad Company for 1902 shows, on page 30, that while the company had not increased its holdings of Chesapeake and Ohio Railway Company's stock, or Norfolk and Western Railway Company's stock, it had increased its holdings in the Baltimore and Ohio Railroad so that they were in excess of a par value of fifty one and a half million dollars.

List of officers and directors on page (i) shows that James McCrea was a director, John P. Green, first vice-president, Sutherland M. Prevost, third vice-president and Samuel Rea, fourth vice-president.

The Baltimore and Ohio report for the year 1902 shows among the directors of that company, John P. Green, James McCrea, Sutherland M. Prevost and Samuel Rea, and also shows that Mr. L. F. Loree was still president.

Mr. Reynolds offered in evidence excerpts from the testimony of George F. Baer in the old case, volume 4, page 1160, *et seq.*, given in Philadelphia, December 27th, 1909.

Government's counsel objects to Mr. Baer's testimony unless Mr. Baer is produced for cross examination.

Defendant insists upon the testimony being received, inasmuch as the petitioners already introduced at great length the testimony of George F. Baer given in the prior case, that testimony being in very considerable proportion the cross examination of Mr. Baer at the prior hearing.

Government's counsel stand upon their objection, and object to this testimony of Mr. Baer being transcribed upon the record at all, as it stands upon an entirely different basis from that of any of the other witnesses, whose testimony has been read into the record, as Mr. Baer is a party to the proceeding, and none of the other witnesses were parties. Notice is given of application to strike this testimony from the record.

The testimony is as follows:—

Testimony of George F. Baer, a witness called by the defendants in the old suit. (Volume IV, page 1160 and following.) Philadelphia, September 27th, 1909.

GEORGE F. BAER, having been duly sworn, was examined as follows:—

By JUDGE CAMPBELL:

Q. You are president of the defendants, the Reading Company, Philadelphia and Reading Railway Company, Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey, the Lehigh and Wilkes-Barre Coal Company and the Temple Iron Company? A. I am.

Q. You are a lawyer? A. I was, and I suppose I am still.

Q. Prior to 1870 and subsequently you were a practicing lawyer? A. Yes.

Q. Were you professionally connected with the Philadelphia and Reading Railroad Company in times past? A. My connection with the old Reading Railroad Company began in 1870. I was first employed as counsel in Berks County and then gradually I became one of the counsel who was called in confidentially under the Gowen administration, and when Mr. Corbin became president, I became a director and continued to serve as one of the counsel. I was on the executive committee during the Corbin administration. When Mr. McLeod became president, I resigned as a director and ceased to have any relation with the administration other than as local counsel and counsel designated at times to try particular cases; what I mean by that, I no longer sustained any confidential relation to the management of the railroad. After the receivership in 1893, I was again called in as advisory counsel to the receivers and became a director again, I think in the election of 1893 or 1894, I do not remember which, and I continued in that relation until April, 1901, when I was made president of the reorganized companies.

Q. Do you recall, shortly after 1870, within a few years, the organization of the Philadelphia and Reading Coal and Iron Company? A. Yes; a special charter was obtained, I think in 1871, under which the Coal and Iron Company was organized.

Q. You were not only associated and related, as I understand, to these managements to which you have referred, as counsel properly in respect to legal matters, but also as an advisor in relation to other business and economic matters? A. During the administrations of Mr. Gowen, Mr. Keim, Mr. Corbin and Mr. Harris, my relations were intimate and close and I was generally consulted about every important business matter, as well as legal matters.

Q. Do you recall the three receiverships which are shown in this record, the one beginning in 1881 and continuing for a year or so; another beginning in 1884, probably, and continuing until about January, 1888; and the other beginning in 1893 and continuing, so far as the conduct of the business operations of the company were concerned, until the first day of December, 1896? A. Yes.

Q. You were also in consultation as to legal matters and business matters during these several receiverships with the Receivers, were you not? A. Yes.

Q. In the same way as you had been with the management of the corporations under their presidents? A. Yes.

Q. Were you familiar and are you familiar also with the proceedings which led up to and formed the organizations of the Reading Company, the Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and Iron Company in respect of their taking over the assets and properties and leased lines of railroad, and other things which were formerly of the Philadelphia and Reading Railroad Company? A. I was one of the counsel and familiar with the whole reorganization scheme. In fact, most of the details of that scheme were committed to me. After consultation with counsel, Mr. John Johnson, Mr. Stetson and Mr. Dickson and other gentlemen, generally they managed to throw the

detail work on me to a very large extent, so that I was engaged in nothing else for a long while except working on the reorganization plan and getting up the details of them, and I am thoroughly familiar with the whole matter.

Q. I would like to ask you particularly whether the lines of railroad of the defendant, Philadelphia and Reading Railway Company, have any access to the anthracite territory commonly known as the Lehigh, Wyoming and Lackawanna Regions? A. The Philadelphia and Reading Railway Company, as you can see by the map, does not extend into the Wyoming Region, which is the name we generally give to the Upper Region, which includes the Lackawanna. It only in a limited way reaches what is called the Lehigh Region. I believe the outline is a little close there, but we have no active lines in the Lehigh and none whatever in the Wyoming Region.

Q. In the Lackawanna? A. We call that the Wyoming.

Q. In the Government petition they are grouped together. A. I do not know what you lawyers do, but technically the Upper Region is called the Wyoming Region, the middle district is called the Lehigh and the Lower Region is called the Schuylkill for convenience, because in the Government reports and statistics that is the subdivision made, and I wish you lawyers would accommodate yourselves to that. It simplifies the examination if you bear that in mind.

Q. In the sense of competition for traffic, then, is the Philadelphia and Reading Railway Company or not a competitor for the carriage of the coal which originates in the Northern, or Upper, and Middle Regions? A. No. We are not competitors in either of those regions.

Q. Now as to the defendant, the Philadelphia and Reading Coal and Iron Company; has it any operations, either in times past or now, or contemplated in the future, in the Upper or Northern and Middle or Lehigh Regions? A. No; its holdings are confined entirely to what we know as the Schuylkill Region.

Q. I would like first to have you state exactly how, so

far as the Philadelphia and Reading Coal and Iron Company is concerned, its circular or quoted prices are made and how and why and under what circumstances the changes are brought about whereby the price is reduced in the Spring, beginning with the first of April, and gradually advanced ten cents a ton until October, as is shown in this record. How are these things done by the Philadelphia and Reading Coal and Iron Company? A. I think, in order to get a clear understanding, that I must state the physical relations of these regions to one another. By reason of the geological formations, the most expensive mining is in the Schuylkill Region. The veins there are distorted, some of them standing almost perpendicular. They are very large—thick, I mean—which involves more troublesome mining by reason of having to support the roof. The quantity of water is enormous. I think that our experts have testified that we lift twelve tons of water for every ton of coal that we lift from our mines. The result is that coal can be produced in the Wyoming Region, where they have no serious water problems and where the veins are nearly flat, and where they are not so thick, and therefore less mine timber is required, at from forty to fifty cents a ton cheaper than we can. The Wyoming Region, you will see by the statistics, has been increasing its output steadily year by year, by reason of the easier mining, so that relatively, whilst we have an enormous acreage of coal lands in excess of the Wyoming Regions, the Wyoming Region annually produces nearly sixty per cent.—running from fifty-nine to sixty per cent.—of the total output of coal. The Lehigh District has not increased for years. It holds at about from eleven to twelve per cent., and our own output runs from twenty-nine to thirty per cent. in the Schuylkill Region. Now you see that, from our reports, there are in evidence, and from the testimony of our experts, with all the capital we have invested, at the present prices of coal we make very little profit in mining anthracite coal. In point of fact, if the Coal and Iron Company charged the common royalty for the coal mined

from its own lands, it could not make a profit at all. The profit is below twenty cents a ton. This year I think it will be fourteen and six-tenths, something like that; but, for general purposes, say below twenty cents a ton. We have not averaged that in the last number of years. We therefore must fix a price on coal that will enable us to operate our mines, and the other regions naturally get the benefit of it. There is a natural law on that subject which has been stated by all writers on political economy. For the purpose of accuracy, I have formulated it:—"The price of the entire supply of anything necessary for a community will be regulated by the cost of production of that portion of the necessary supply which is produced at the greatest expense." Anderson, Malthus, Ricardo, Smith and everybody since have practically laid down that rule, and it is a law of common sense illustrated in various ways. Here are two farms. They may be side by side; one can grow wheat to the extent of twenty bushels to the acre, and the other thirty; but there will be no difference in the price of the wheat. If the price of anthracite coal were fixed so as not to yield a profit to our Coal and Iron Company, the result would be that the mines would stop for a short time, and the price of coal would necessarily go up, because the withdrawal of thirty per cent. of any commodity would naturally affect the price, and the final result would be that, the price advancing, our mines would resume operations again. Therefore, it is the general custom of the other companies, I believe, to follow our circular. We fix the best price we can get, and the Wyoming Region and the people that can produce coal cheaper than we do necessarily follow our price, because it would be foolish for them to undertake to cut it when there is a market for the reasonable output of existing mines, taking it year in and year out. There are times—just now that is true—when the market will not take the quantity of coal that can be mined; but we generally have to store coal in the Summer months in order to provide for the Winter months' supply. In case of accidents to the mines or

severe Winters, that affect transportation, the public might be without coal, and we try to avoid that.

Q. You have stated that the circular or quoted price of coal was fixed by the Philadelphia and Reading Coal and Iron Company itself, independently of all the other parties defendant here. I would like to call your attention to what I mentioned in the question, as to the fixing of the method of reduction of the price in the Spring and its gradual advance in the Fall. Mr. Henderson's testimony covers it, but I would like to have it supported by your own. A. The difficulty in the management of the anthracite coal business is this; that in the Summer months, when mining can be done cheapest, the public requires no coal for household purposes, and there is no sale for domestic sizes of coal. There is only a sale for what we call steam sizes, in operations that are carried on, of course, in the Summer months. Under the old system we found that, in the Fall months and Winter months, the demand for coal was so active that we really could not supply it, and it was necessary to try to make some provision to have a supply in excess of the daily mining. The storage of coal is very expensive. By accurate, actual experience, we find that, not allowing anything for the cost of storage plants, it costs us from thirty to thirty-five cents a ton to put coal in a yard and to take it out. This not only includes the handling of the coal, but there is what we call a degradation in sizes. The Stove Coal and the Egg Coal and the Pea Coal, of course, will break up, so that when you put so many tons of a different kind of coal in the storage yards and you pick it up again, you will find that the large sizes have decreased, upon which we get the higher price, and the smaller sizes have increased. Now, to try to avoid the cost of storing coal and the difficulty we had in the Winter months of supplying all the coal required, the difficulties of transportation, and everything else arising, we conceived the idea of trying to induce the dealers to store this coal during the Summer months, and the effort was made, therefore, to reduce the price of prepared sizes fifty cents

a ton in April, forty cents in May, thirty cents in June, twenty cents in July and ten cents in August. During those five months, if you will add that up and divide it, you will find it represents practically what we considered cost of storing the coal during that time. It had the further advantage of enabling us to reach markets in the Summer months that cannot be reached in the Winter months. You take a point like Superior where the Coal and Iron Company has a large yard for distribution and where, by the time we get through improving that yard, we will have an investment of over a million dollars in the yard itself. Now, we could not ship coal to that yard and in the Winter months, when the lakes are frozen over an all rail movement would be impracticable. So we try to get our coal by the lakes in the Summer months, and we try to induce the dealers, instead of our carrying the coal, to buy it in the Summer months, and the inducement to buy it is this reduction of price to them, so that, if they buy their coal in April at fifty cents a ton less, they can afford to carry it until the Winter months come, when they retail it out. That is the whole theory.

Q. Mr. Henderson in his testimony has stated that, for the considerations which you have now mentioned, he obtained from you as the executive, authority to put in the plan of making the reduction of fifty cents a ton on prepared sizes in April and gradually advancing it ten cents a ton. I simply ask whether you confirm that statement that it was done under your sanction and authority? A. It was done under my sanction and authority. Who made the original suggestion, whether Mr. Henderson or Mr. Richards, I do not know; but it was suggested to me by somebody and I afterwards consulted them. Who originally made the suggestion at the time, I do not know; but it struck me as plausible and I thought over it and looked into it carefully and reached the general result I have stated here, and which is a sound economic proposition in my judgment.

Q. It was put in effect by the Philadelphia and Reading Coal and Iron Company from the considerations named

and not as the result of any combination or agreement with other people? A. No; I had no consultation with anybody else about that, because there was no reason to. The conditions were not alike at all. I think that the other companies would have been very glad to have kept us from going West, for example. Quite a number of times I have been told by my friends operating coal companies and railroad companies in New York that we have no business to go West with our coal; so I do not think they would have helped me in any such contingency.

By MAJOR WARREN:

Q. It enabled you to run your mines, and keep your labor together and all that? A. Certainly, and it is very important.

By JUDGE CAMPBELL:

Q. There is one other subject which seems to be prominent in the minds of Government counsel, and that is that the Philadelphia and Reading Railway Company is making enormous earnings out of the transportation of anthracite coal. I would like you to put on the record some account of the revenues which the Railway Company receives from transportation, independent of anthracite coal. A. The whole story of the Reading illustrates the falsity of the notion that any railroad can prosper by handling a single commodity like anthracite coal. With all the efforts of the brilliant men who preceded me to make the Reading Railroad Company profitable, and with a tonnage in anthracite coal that was then the largest in proportion to any company—originally seventy per cent. of the traffic receipts of the Railroad Company were derived from anthracite coal—ten years ago it got down to sixty per cent. and, with all this traffic, it was impossible for the Reading Railroad Company to make any money, and it is not necessary to go into the history of its receiverships, and all that. The moment the policy of the Reading Railroad Company changed so as to agree with their neighbors, to a fair exchange of all kinds of traffic, the prosperity of the Reading Railroad

Company began, and now its receipts on anthracite coal are down to thirty per cent. and decreasing every year.

Q. You do not mean to say that the revenue is decreasing, but the proportion? A. No; I did not say the revenue, but the percentage is decreasing every year. That was brought about by increasing the merchandise traffic, the passenger traffic, the miscellaneous traffic and the bituminous coal traffic. Just at the present time our bituminous coal tonnage exceeds the anthracite coal tonnage, and last year I think it was within a million or two tons of it. I made a little statement, which probably I can find here, that will give you those percentages. They are very interesting. The percentage for the year ending June 30th, 1908, was thirty and five-tenths and for this year it is thirty and three-tenths. As illustrating what I mean, I will take one period. Take the fiscal year ending June 30th, 1898. The gross receipts of the company were $21,986,834. In the year ending 1907, just ten years afterwards, they were $43,528,936. You see the gross receipts have doubled. Now take the item of merchandise. The merchandise receipts in 1898 were $7,163,000. In 1907 they were $16,360,000. The passenger receipts in the former period were $3,877.00; in 1907, $6,309,000. The miscellaneous receipts were $1,014,000 and in the latter period $2,039,000. The bituminous coal increased from $1,414,000 to $5,642,000. The anthracite increased from $8,517,000 to $13,088,000. In other words, there was fifty-two and nine-tenths per cent. increase in the ten years in the anthracite business; two hundred and ninety-two and five-tenths per cent. of increase in the bituminous business; eighty-five and five-tenths per cent. increase in the merchandise business; the passenger, which I did not figure, was one hundred per cent., and the miscellaneous one hundred per cent. I am using this now to show you that the increased prosperity of the Reading System has not come from anthracite coal. It has been a factor, of course. Without the anthracite coal, we would lose so much revenue; but the development of the Reading Railway System has been, during the past ten years, owing to the enormous increase of

traffic other than anthracite, and largely due to a policy of exchanges. Instead of the Reading System being an Ishmaelite, fighting everybody, we freely exchange at proper connecting points, with all the railroads, without discrimination or distinction, the Baltimore and Ohio, the Pennsylvania, the New York Central, the Lehigh Valley, and with all the railroads, so that they get the benefit of the traffic from our region and we get the benefit of the traffic that comes from all over the United States into this territory and into the ports here.

By JUDGE MOOT:

Q. In the temporary absence of Judge Campbell, I will ask you, if you did not make the exchange voluntarily, as an interstate carrier under the Interstate Commerce Act which you would be compelled to do now? A. Certainly. There is no competition between railroads, in rates, and cannot be under the Interstate Commerce Act. The competition is limited to facilities, and service. The explanation is very simple. Every rate must be published. Now take this example: suppose the Pennsylvania would publish a rate, a cut rate, say between Philadelphia and New York, reducing the rate twenty-five cents a ton. We would find that out immediately, because it cannot be a secret rate, it must be filed with the Interstate Commerce Commission. What would be the result? We would have to follow it and reduce our rate immediately, otherwise we would lose our traffic. So that the Interstate Commerce Act as a statute has had this effect, that there is no longer any possible competition between railroads as to rates. The only competition is in facilities and service, terminal facilities, and prompt handling, and there is the sharpest competition in that. There is a new connection being made with our system through Clearfield. We expect to compete with the northern lines of railroad sharply in trade to New York and Philadelphia. Why? Not because we will cut the rate, because that would do us no good—they would cut back—but because our distance has become shorter, with the single exception of the Pennsylvania

Railroad, and we can make better time and can give better facilities, and therefore we hope to get part of the trade.

By Judge Campbell:

Q. Preliminary to the negotiation whereby the Reading Company acquired a certain interest in the capital stock of the Central Railway Company of New Jersey, I would like you to state on the record the interdependent traffic relations of these two companies, or rather the dependence of the Philadelphia and Reading Railway system upon the tracks of the Central Railroad of New Jersey for its entrance to the Jersey City terminus for the conduct of traffic originating on and tributary to the Philadelphia and Reading Railway Company? A. Assuming that you have the maps, showing the locations of the different roads, it is apparent that the Jersey Central System was and is still absolutely essential to the Reading System to get an entrance to the New York harbor, which, of course, is the great harbor of the country. For years and years attempts were made to unite these two properties, which complement and supplement each other. They are not parallel and competing lines in any sense of the term. The Reading must get to New York over the Jersey Central System, and the Baltimore and Ohio, which is an important connection with the Reading and gives it some of its largest freight, must get to New York over the Central System. The Central Railroad fortunately has the best terminals in the harbor of New York; I mean rather facilities for the best terminals. They own large areas of land there that are capable of development to meet the wants of the company for a hundred years to come. You know the history of the different efforts. Twice an effort was made to unite the Jersey Central and the Reading. The last time reference is made to Judge Magill's decision, in which he declared that, under the laws of New Jersey, a lease could not be made. Whether or not that was good law, I do not know. An appeal was taken which was undecided, because the financial terms of that lease were impossible.

The commercial and the business part of the plan by which the Lehigh Valley and the Jersey Central were leased by the old Reading Company was absolutely and unqualifiedly false. It was the work of boys ignorant of financial conditions, and was bound to fail and it did fail utterly and the appeal never was tried, because the thing broke down financially. In December, 1900, I happened to be in New York and I was told that the gentlemen who controlled the New Jersey Central were tired of it and that the stock was for sale. I was also told that the Baltimore and Ohio Railroad had made an offer for this stock, which the parties had refused because they considered it too small. This information was a great surprise and I at once went to Mr. Morgan, who was a voting trustee of the Reading Company, and told him that the situation was most alarming; that it would be the ruin of the Reading property if an antagonistic company got control of the Jersey Central, or if the Baltimore and Ohio got us by the throat in that way and could control our terminals into New York, and that therefore the matter called for prompt action. I told him then that I always thought that the Jersey Central could be legally bought; that the limitations in the laws of New Jersey applied only to leasing and that, under the powers of the Reading Company and under the statutes of New Jersey, we could undoubtedly buy a majority of the stock. He told me to keep my own counsel and look up the whole subject and see what could be done. I came home and I made a critical and careful examination of the reports of the New Jersey Central Railroad for a number of years, to see what in my judgment its stock would be worth, taking into account the future possibilities. I also took up the question of how we could buy it and finance it. I made a report to Mr. Morgan in about a week's time. It took me a good while to get all the information I got, because I had to do it secretly, you know, as counsel. I sent it to Mr. Morgan and it was such a big letter that he did not read it until in a few days I called his attention to it, and then he picked it up and read it in the evening after business hours. When I got home, one night in Reading

there was a call at the telephone and I went to the phone and Mr. Morgan was there, telling me to come to New York immediately, that I must come on at once about that Jersey Central business. I went to New York the next morning. I saw Mr. Morgan and told him that if he thought the financial plan was sound and he could back it—it involved that collateral trust mortgage, you know, and the borrowing of money—that I would be responsible for the rest of it, that I thought it was sound. He said to me, "What do you think is the fair price?" I said, "I have named what I think is the fair price in there." He called for Mr. Baker, who was the chairman of their committee, or a leading man in it. Mr. Baker came over and we sat down and dickered for about five minutes, until Mr. Baker said they would take one hundred and sixty and I said I thought I would advise that, and I went to the phone and called up Mr. Welsh and Mr. Harris, who were, with myself, a majority of the executive committee and they said, "Yes," and the deal was closed. That is the whole story. We did not even make a writing about it. Mr. Baker said he would undertake himself and with Mr. Maxwell and friends to deliver us a majority of the stock. I do not know what further I can say about it.

By Mr. Dickson:

Q. It was not done to stifle competition? A. Indeed, it was to enable us to compete with the people that had us by the throat in the New York harbor and it was absolutely essential to the prosperity of the Philadelphia and Reading Railway Company and the territory that depends upon the Philadelphia and Reading Railway for transportation that we should get terminals in New York. Instead of stifling competition, it created the competition that has led to hourly trains—the best trains, let me say, in the world—between here and New York, in competition with the Pennsylvania Railroad, which, take it all in all, is the greatest railroad—I will not say it is the best—in the world.

By Judge Campbell:

Q. To respond to the allegations of this petition, was this purchase of this interest which the Reading holds

in the Central Railroad Company's stock, induced by any understanding or agreement, or combination with other defendants in this suit, or any of them? A. They knew nothing about it. I do not think they would have liked it then, or that they like it very much now. There was nobody that knew anything about it. There was no consultation with anybody, except the story as I have given it to you. It really was my own initiative when I heard that this property was for sale, and the general impression that the New Jersey Central had was that, because these prior suits had been decided against us, the Reading could not take it and we were not considered as a factor in the purchase at first. When I heard that it was for sale, I simply said: "We can take that property by buying the stock," and it was so secretly done that nobody knew anything about it until the thing was consummated, except Mr. Twombley, Mr. Robert Bacon and Mr. Morgan. Mr. Twombley happened to be in Mr. Morgan's office—in fact, it was in Mr. Twombley's office that I heard first that this stock was for sale.

Q. One of the allegations of the plaintiff's petition is that, instead of an outright purchase of securities and stocks, this was effected by means of a mere exchange of securities. A. Exchange of securities?

Q. Yes; in other words, that the Reading Company in payment for that stock exchanged its collateral trust bonds with the owners of the stock for their stock. What is the truth about that? A. Why, no.

Q. That is the allegation in the petition. A. Where do such stories arise? When we determined to take it, we took the usual way of creating a syndicate, and the Reading bonds were sold to the syndicate and they paid their money for them. The only trouble I had about that was that some of the Philadelphians here complained that they did not get a big enough share in the syndicate. All those bonds were sold in the regular way. The bankers formed a syndicate and subscribed for them and put them on the market, and they are good bonds everywhere except in your State of New York, where,

under the insurance laws, they seem to be tabooed for insurance companies; but other people consider them about the safest bond there is to be found anywhere. It is not creditable to your New York legislation on insurance investments.

Q. At the expense of some reiteration and repetition I would like to ask you two or three questions suggested by the terminology of the so-called Sherman Anti-Trust Act, which declares in Section 1, that every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States is declared to be illegal. In respect of any of the transactions to which your attention has been called, has there been any contract, or combination in the form of a trust or otherwise, or conspiracy, whether in restraint of trade or otherwise, with and of the other defendants in this case in connection with the conduct of the business of mining, or selling, or transporting the same, or in respect of the acquisition of Jersey Central stock by Reading Company? A. None whatever.

Q. In Section 3 it provides that every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce in any of the United States, &c., is declared illegal. Has there been any combination or confederation of any kind, nature or form between these defendants or between your defendants and anybody else in respect of these matters? A. I do not know of any. I have been no party to any conspiracy or combination. My object has been to develop trade and not to restrain it.

Q. Is there anything in the relations between these parties to restrain the Philadelphia and Reading Railway Company from carrying all the traffic it can procure? A. Nothing whatever.

Q. Is there any understanding between the companies that the Philadelphia and Reading Coal and Iron Company shall not produce and sell all the coal for which it can find a market? A. None whatever. We are absolutely free to sell.

Q. Is there any understanding or agreement between these parties whereby the other defendants are limited or restrained in any manner or form from the production and sale of all the coal they can find a market for? A. I know of none and have never been a party to any.

Q. Or to restrain the railroad companies from transporting all the traffic which they can obtain? A. No agreement in restraint of trade in any way or form. Every company is free to do as much business as it can, in its own way.

Q. What was the business of this Excelsior Company, which subsequently became the Reading Company, when you first knew it? A. The first I knew it, it was building the Bound Brook Road.

By JUDGE CAMPBELL:

Q. It was a railroad crossing New Jersey, where the predecessor had run? A. Yes, sir; the old National, what is now the Bound Brook.

By MR. MCREYNOLDS:

Q. Why was that charter taken up, instead of a new one being taken out, at the time the Reading Company was put in possession of the stocks? A. Because its corporate powers suited us exactly for the purposes that we intended.

Q. It was an old company, incorporated many years before by the Legislature? A. Yes, sir, and antedated the new Constitution, and, out of double precaution, we had the Attorney General proceed against us to test the validity of the charter in every way before we used it, and it was held to be a valid subsisting charter by the State.

Q. It was taken up because it antedated the present Constitution of Pennsylvania? A. And had corporate powers that could not have been obtained by special legislation. Under the new Constitution all legislation must be general in Pennsylvania, and this was an old, valid, subsisting charter, which had special powers which we deemed valuable, and have proven so.

Q. Has there been any change in the arrangement between the two roads in reference to operations over that part of track of the New Jersey Central Railroad lying between Bound Brook and Jersey City? A. There have been different operating arrangements that were made by the Operating Department, but none that amount to anything. They are the details of management.

Q. The same general arrangement is in effect to-day as existed prior to the acquisition of the stock of the Jersey Central by the Reading Road? A. Yes, sir, but the reason of the acquisition was, that that arrangement was threatened very violently. It was to secure that for all time that the stock was purchased.

Mr. Reynolds offered in evidence testimony of Mr. Robert DeForrest in the old case, volume 2, pages 684 and following:—

Deposition of Robert W. de Forest, called as witness for the Government in the old suit (Vol. 2, pages 684-686).

Stipulation with Department of Justice as to the so-called commodities pleading.

By Judge CAMPBELL:

Q. In the cross examination of Mr. Baer on Monday afternoon, toward the close of the session, there was introduced in evidence a portion of the answer of the Central Railroad Company of New Jersey in the so-called commodities case at the suit of the United States. State whether in that connection you were solicitor and counsel for the Central Railroad Company of New Jersey in the preparation and filing of the pleadings in that case as well as counsel for other defendants in other cases arising under the commodities clause of the so-called Hepburn Act? A. I was counsel for the Central Railroad Company of New Jersey in the commodities case for the purposes indicated in your question, and I was also in association with Mr. John G. Johnson,

counsel for the railroad companies defendants in the other cases which together had been grouped as the commodities cases, and were argued both in the Circuit and the Supreme Courts.

Q. State whether the form and substance of the mutual altercations of the parties to those litigations which comprised the pleadings therein, had been the subject of conference between yourself and the Attorney-General of the United States and his special assistants? A. Yes, sir.

Q. State whether or not it is true that those mutual allegations, demands, and so forth, and so forth, were devised by the counsel for the Government and the defendants for the purpose of speeding and expediting the cause and avoiding the necessity for taking strict proofs? A. This is true: I drew the answer of the Central Railroad Company of New Jersey in such form as to all matters of fact that I expected and hoped that it would be taken for purposes of that litigation for the Attorney-General in order to raise the questions of law, and it was so taken.

Q. State whether in connection with these pleadings there was an understanding between yourself and the Attorney-General and his assistants that these allegations in the forms presented for the purpose of raising the issues under the act of Congress were not to be used by or for the Government of the United States in any other litigation? A. There was a stipulation entered into, as I remember, at the instance of the Attorney-General, in all these suits, providing that the allegations of the pleadings should be deemed true and taken only for the purposes of those suits. That stipulation is in writing.

Q. Will you kindly produce that stipulation and hand it to the Examiner, to be placed upon the record in connection with your testimony, and at the same time supply the counsel for the Government with a copy? A. I will.

(It is understood that the foregoing objection by the Government to this line of testimony shall be understood as applying to each question and answer.)

The statement produced by the witness is as follows:

"In the Circuit Court of the United States for the Eastern District of Pennsylvania.

"In Equity.

"April Sessions, 1909. No. 87.

"*United States of America, Complainant,*

"vs.

"*Erie Railroad Company, Defendant.*

"It is stipulated and agreed between counsel in the above cause that its submission on bill and answer and any averment or admission in the pleading of either party contained shall in nowise prejudice the said parties in any other suit or proceeding heretofore or hereafter instituted, and shall be operative and take effect only with respect to the present suit and for the purposes thereof.

"CHARLES J. BONAPARTE,
"*Attorney-General.*

"JOHN G. JOHNSON,
"*Atty. for Deft.*

"ROBERT W. de FOREST,
"*Atty. for Defts.*

"Same stipulation filed in 85-89-91-95-97."

Mr. Reynolds also offered in evidence testimony of Robert DeForrest in the old case, volume 2, pages 678 and 684, as follows:

Deposition of Robert W. de Forest, called as witness for the Government in the old suit (Vol. 2, pages 678-684).

Proofs relating to ownership of stock of Lehigh & Wilkes-Barre Coal Company, its intermediate status and its final pledge under the General Mortgage of the Central Railroad of New Jersey, July 1st, 1887, under the authority of the United States Circuit Court for the District of New Jersey.

Proofs relating to ownership of stock of the Lehigh and Wilkes-Barre Coal Company.

IN CHANCERY OF NEW JERSEY.

Between

The Lehigh Coal and Navigation Company, Complainant,

and

The Central Railroad Company of New Jersey, Defendant.

ORDER AUTHORIZING RECEIVER AND COMPANY TO JOIN IN AN AGREEMENT FOR RE-ADJUSTMENT, MORTGAGING AMONGST OTHER PROPERTY THE LEHIGH AND WILKES-BARRE COAL COMPANY STOCK.

Benjamin Williamson, of counsel of Francis S. Lathrop, the Receiver appointed in this cause by this Court, having appeared before and presented to the Court a proposed agreement for the equitable adjustment of the affairs of the Central Railroad Company of New Jersey, without a foreclosure, embracing the following parties, that is to say:—

First.—The holders of the bonds of the Lehigh and Wilkes-Barre Coal Company.

Second.—The holders of the bonds of the American Dock and Improvement Company.

Third.—The holders of the convertible and consolidated bonds of the said railroad company, secured by a mortgage made by said company to the New York Guaranty and Indemnity Company.

Fourth.—The stockholders of the said Central Railroad Company.

Fifth.—The Lehigh and Wilkes-Barre Coal Company.

Sixth.—The Receivers of the last-named company.

Seventh.—The Lehigh Coal and Navigation Company.

Eighth.—The North Pennsylvania Railroad Company and the Delaware and Bound Brook Railroad Company.

Ninth.—The Central Railroad Company of New Jersey.

Tenth.—The Receiver of the last-named company, by which said parties interchangeably agree to do and perform all the matters and things by them respectively to be performed as are in each and all the items thereof set forth.

First.—By the said proposed agreement the said The Central Railroad Company is to be released from its guaranty upon six millions one hundred and sixteen thousand ($6,116,000) dollars bonds of The Lehigh and Wilkes-Barre Coal Company and also from its guaranty of so many of the remaining five millions three hundred and eighty-four thousand ($5,384,000) dollars of said last-mentioned bonds as shall be owned by persons signing said agreement, the consideration for which is the giving of a preference and priority as to interest to those owners of the said five millions three hundred and eighty-four thousand ($5,384,000) dollars as shall sign said agreement over the owners of the said six millions one

hundred and sixteen thousand ($6,116,000) dollars of said bonds, in the manner particularly specified in the annexed agreement.

* * * * * *

Third.—By the third item of the said agreement the holders of the convertible and consolidated bonds of The Central Railroad Company of New Jersey agree that the coupons thereon which are first payable within two and a half years from and after the date for payment of the coupons which were last payable before the appointment of the said Francis S. Lathrop as Receiver aforesaid shall be cancelled on receiving bonds to be issued by the said The Central Railroad Company of New Jersey, payable in twenty-five years, or any time prior thereto, at the option of the said last-mentioned railroad company, bearing interest at the rate of seven per cent. per annum, payable half yearly; such new bonds and the original bonds from which such coupons are to be taken and cancelled are to be secured by a mortgage, the issue of new bonds under which shall not exceed five millions five hundred and fifty thousand ($5,550,000) dollars on divers properties specified in said third item (among which properties was 132,000 shares of the capital stock of The Lehigh and Wilkes-Barre Coal Company of a par value of $6,600,000).

* * * * * *

Fifth.—By the fifth item of the said agreement the Lehigh and Wilkes-Barre Coal Company and the receivers thereof, with the requisite permission of the Court which appointed them, agree to make and issue the bonds and give the preference to interest on bonds, and in the sinking fund, as provided for in the first item of the agreement, and in all things to perform the conditions and provisions of the said item.

Sixth.—By the seventh item of the said agreement, the said Francis S. Lathrop, Receiver, as aforesaid, agrees that, with the consent of this Court, he will comply with and perform the terms and conditions of the first, second,

third, and fourth items of said agreement, and will in all things carry out and perform all the provisions and conditions of said agreement for him to perform, and will apply the money that may accrue by reason of the provisions of said agreement, and the income of the railroads in his charge, so as to discharge the liabilities of the said Central Railroad Company for the said indebtedness of about four millions five hundred thousand ($4,500,000) dollars, or the unpaid balance thereof, while at the same time protecting the rights of the property of those interested in said railroad company as bondholders and as stockholders.

* * * * * *

And the said counsel having moved that an order be made in the cause permitting and authorizing the said Francis S. Lathrop, as Receiver as aforesaid, and the said The Central Railroad Company of New Jersey to each sign the said proposed agreement, and to perform the same so far as the same is by them, respectively, to be performed, and the Court being of opinion that the said agreement is in and by its terms and provisions reasonable, equitable and just, and conducive to the best interests of all the parties interested in the property, rights, and business of the said railroad company, if executed and carried into effect, and that if it should fail to be sufficiently assented to to be put in course of performance or of complete performance, that no party interested in the said property, rights, and business will be placed in any worse position or condition than he or it now is, it is, on this second day of March, 1878, by the Chancellor of the said State of New Jersey.

Ordered, That the said Francis S. Lathrop, as Receiver as aforesaid, have permission and authority, and permission and authority are hereby given to and vested in him to sign the said agreement, as Receiver aforesaid, and to perform the same so far as by the terms thereof, he as Receiver as aforesaid can or should perform the same; and for the performance thereof he is hereby

authorized to employ and make use of such means and agencies as he may deem suitable and necessary for that purpose.

And it is further ordered, That the injunction ordered in this cause against the said Central Railroad Company of New Jersey by the order therein, bearing date the 14th day of February, 1877, be and the same hereby is so far relaxed and modified as to permit and authorize the said Central Railroad Company of New Jersey to make, duly execute, and deliver the bonds and the mortgage mentioned and provided for in third item of the said proposed agreement, the income bonds mentioned in the fourth item of said proposed agreement, and to perform all other parts of said proposed agreement, which by the terms thereof are to be done or performed by the said The Central Railroad Company of New Jersey, and to do whatever may be necessary to the full and effectual performance.

This order, however, is made without prejudice to the rights of any person interested in the property or the assets of the said Central Railroad Company of New Jersey, as creditor or stockholder, who shall not have signed said agreement, reserving to them the right to apply to this Court accordingly.

(Signed) THEODORE RUNYON, *C.*

Proof that the stock of the Lehigh and Wilkes-Barre Coal Company came into the possession of the Receiver the Court of Chancery.

IN CHANCERY OF NEW JERSEY.

Between

The Lehigh Coal and Navigation Company, Complainants,

and

The Central Railroad Company of New Jersey, Defendants.

EXHIBIT A, MAY 8TH, 1882. AMZI DODD, MASTER.

Inventory of all the estate, property, and effects of the Central Railroad Company of New Jersey, of every kind and description, which came into the possession of Francis S. Lathrop, as Receiver, on February 15th, 1877, when he entered upon his duties, as nearly as the same could be ascertained.

* * * * * *

SCHEDULE 1.

CASH SECURITIES AND ACCOUNTS RECEIVABLE, &C.

The values affixed to the following named securities and accounts receivable are those at which such securities or accounts stand upon the books of the company, and are here inserted, not for the purpose of fixing the value thereof, but for the purpose of connecting this inventory with the said books.

* * * * * *

6,116 Lehigh and Wilkes-Barre consolidated bonds.....	$5,843,183.75
Stock of the Lehigh and Wilkes-Barre Coal Company, par value $6,649,250.....	5,789,038.26

Proof that the stock of the Lehigh and Wilkes-Barre Coal Company was delivered back by the Receivers to the company by decree of Court.

IN CHANCERY OF NEW JERSEY.

Between

The Lehigh Coal and Navigation Company, Complainant,

and

The Central Railroad Company of New Jersey, Defendant.

DECREE FOR DISSOLUTION OF INJUNCTION, SURRENDERING PROPERTY, &C.

On reading the report of Joseph D. Bedle, special master, made the sixteenth day of May, eighteen hundred and eighty-three, in pursuance of an order of reference bearing date the fourth day of May, eighteen hundred and eighty-three, in the above cause, on the petition of the Central Railroad Company of New Jersey to dissolve the injunction issued on the fourteenth day of February, eighteen hundred and seventy-seven, and to direct Henry S. Little, the Receiver, to surrender and deliver up into the possession, management, and control of the said company all the property of whatever kind or description now in his possession as Receiver, the facts stated in the said petition being admitted in writing to be true by the Receiver.

* * * * * *

It is, on this nineteenth day of May, in the year eighteen hundred and eighty-three, by the Chancellor ordered, adjudged, and decreed that the said report of the Master be confirmed in all things, and that the Receiver do surrender, transfer, and deliver over to the Central Railroad Company of New Jersey all the property, of whatever kind or description it may be, now in the possession or control of the Receiver, except certain unencumbered assets amounting nominally to four million nine hundred and eighty-seven thousand two hundred and three dollars and twelve cents, referred to in the Master's report, and the particulars of which appear in Exhibit 2.

This property included all the stock of the Lehigh and Wilkes-Barre Coal Company which had come into possession of the Receiver and which stood upon the books of the company at $5,789,088.26, as appears by Exhibit 3, annexed to the report of J. D. Bedle, Master.

Proof of execution by the authority of the United States Circuit Court of the general mortgage of July 1st, 1887, which included the stock of the coal company.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

John S. Kennedy et al.

vs.

The Central Railroad of New Jersey.

The petition of the Central Railroad Company of New Jersey, corporation defendant, respectfully represents:—

First.—That at the request of the representatives of the holders of a majority of the indebtedness of the corporation a committee was appointed to prepare and submit a plan for the reorganization of the company, and after a careful examination of its affairs and property the board of directors and the reorganization committee have prepared a plan for the readjustment of its affairs which has received the approval and recommendation of the Receivers heretofore appointed in the cause, and having been submitted to the creditors and stockholders has already been approved by them to such extent as to warrant the belief that the same can be carried into successful execution.

A copy of the plan of the reorganization committee and of the proposition made by the corporation defendant to its stockholders and certain of its creditors is herewith submitted, marked "Exhibit A."

Second.—And your petitioner further shows that by reference to the said plan it will appear that it contemplates the issue of $50,000,000 one-hundred-year gold bonds, bearing interest at such rates as may be fixed at the period of issue from time to time, not exceeding 5 per cent. per annum, with coupons attached payable semi-annually and when registered, interest payable quarterly, to be secured by a general mortgage covering all the property of the company, including all the se-

curities representing control of the necessary constituent companies and all equipment now subject to special car trust liens.

Third.—Your petitioner further shows that by the original order of October 15th, 1886, an injunction was issued against the defendants and the persons claiming to act by, through, or under them, and all other persons, to restrain them from taking possession and managing said property, with leave to any party in interest to apply for further directions.

Your petitioner therefore prays that the said injunction may be so far relaxed as to permit the corporation defendant, at the discretion of its board of directors, to exercise its corporate powers and franchises, for the purpose of making, executing and delivering the proposed mortgage, and of creating, issuing, and disposing of so many of the said bonds as may be necessary for carrying the said plan into effect by the taking up or providing for all of the overdue obligations of the company defendant.

And your petitioner will ever pray.

CENTRAL R. R. CO. OF NEW JERSEY,
J. R. MAXWELL, *Pt.*

B. WILLIAMSON,
Sol. & Counsel of Petitioners.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss:*

J. Rogers Maxwell, being duly sworn, says: I am the president of the Central Railroad Company of New Jersey, and have read the foregoing petition, and the facts therein stated, of my own knowledge, are true, and so far as they are stated upon the information of others I believe them to be true.

J. R. MAXWELL.

Sworn and subscribed to before me this thirteenth day of June, A. D. 1887.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

John S. Kennedy et al.

vs.

The Central Railroad of New Jersey.

And now, June 15th, 1887, upon consideration of the petition of the Central Railroad Company of New Jersey this day filed, it is ordered and decreed that the injunction heretofore issued by the order of October 15th, 1886, be, and the same is hereby, so far relaxed as to permit the said corporation defendant, at the discretion of its board of directors, to exercise its corporate powers and franchises for the purpose of making, executing, and delivering a general mortgage covering all the property of the company, including all the securities representing the control of its necessary constituent companies, and all equipment, including that now subject to special car trust liens for the purpose of securing the proposed issue of $50,000,000 one hundred year gold bonds, and to sell, deliver, and to exchange such of the said bonds as may be necessary for the purpose of carrying the said plan into operation.

It is further ordered that the exchange of the new bonds for old securities and the application of the proceeds of the bonds sold shall be made by the receivers appointed in this cause.

W. McKENNAN,
Cir. Judge.

(A true copy.)

[SEAL] S. D. OLIPHANT,
Clerk.

Extract from Adjustment Mortgage, dated May 1st, 1878, executed by the Central Railroad Company of New Jersey to John S. Kennedy, John Edgar Johnson, and

Jacob D. Vermilye, Trustees, comprising description of the stock of the Lehigh and Wilkes-Barre Coal Company, as included in said Mortgage.

"*Seventh.*—One hundred and thirty-two thousand shares of the capital stock of the said Lehigh and Wilkes-Barre Coal Company of the par value of fifty dollars each, amounting in the aggregate, at par, to six millions six hundred thousand dollars, now belonging to said party of the first part."

Extract from General Mortgage, dated July 1st, 1887, executed by the Central Railroad Company of New Jersey to the Central Trust Company of New York, Trustee, comprising description of the stock of the Lehigh and Wilkes-Barre Coal Company, as included in said Mortgage.

"*Seventh.*—One hundred and thirty-two thousand shares of the capital stock of the said Lehigh and Wilkes-Barre Coal Company of the par value of fifty dollars each, amounting in the aggregate at par, to six millions six hundred thousand dollars, now belonging to the railroad company."

Mr. Reynolds also offered in evidence remaining portion of the agreed statement in the old case respecting the Reading Company, which was omitted from that portion which was put in by the government, as follows:—

Agreed Statement as to the Reading Company, Philadelphia and Reading Railway Company, and the Philadelphia and Reading Coal and Iron Company.

Volume 4, pages 521 to 528, inclusive, and 542 of the old case.

I.

May 24th, 1880, The Circuit Court of the United States for the Eastern District of Pennsylvania entered an order in a certain suit in Equity, wherein Moses Taylor, a citi-

zen of the State of New York, was complainant and The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company were defendants, appointing Edwin M. Lewis, Franklin B. Gowen and Stephen A. Caldwell Receivers "of said corporation defendant, and of the railroad, real and personal property and estate of the said The Philadelphia and Reading Railroad Company, and of all the property, privileges, franchises and powers of the said The Philadelphia and Reading Railroad Company and of the said The Philadelphia and Reading Coal and Iron Company of whatever kind or description or wheresoever situated," &c., and "that an injunction be issued against the defendants, and all persons claiming to act by, through or under them, or other persons, to restrain them from interfering with the said Receivers' taking possession and managing said property," &c.

February 14th, 1883, an order was entered in said suit and in another suit in the same Court wherein the Farmers and Mechanics National Bank was complainant and the said Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and others were defendants, on the petition of The Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company, "that the Receivers surrender, transfer and hand over" unto the Union Trust Company of Philadelphia, Trustee, the properties and premises in their hands.

May 16th, 1884, a further order was entered in the said suit reciting, "and it appearing from the report of the Master that the said Receivers have surrendered, transferred and handed over to The Philadelphia and Reading Railroad Company and to The Philadelphia and Reading Coal and Iron Company all the property, real and personal, in their possession, or under their control which they were directed to surrender and transfer to the said corporations by the decree of February 14th, 1883, and that they have duly accounted, under the direction of the Master, &c., * * * that the said Edwin M. Lewis,

Franklin B. Gowen and Stephen A. Caldwell, be and they are hereby relieved and discharged from the office of Receivers, &c."

II.

June 2d, 1884, The Circuit Court of the United States for the Eastern District of Pennsylvania entered an order in another suit in equity wherein Henry C. Kelsey, a citizen of the State of New Jersey was complainant, and The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and others were defendants, by which it appointed Edwin M. Lewis, George deB. Keim and Stephen A. Caldwell Receivers of "said corporations defendant, and of all the railroads and canals owned, leased or operated by the said The Philadelphia and Reading Railroad Company and of all the real and personal property of The Philadelphia and Reading Coal and Iron Company and of the said Philadelphia and Reading Railroad Company of whatever kind or description," &c., and "that an injunction be issued against the defendants or other persons claiming to act by or under them, and all other persons, to restrain them from interfering with the said Receivers and taking possession of and managing said property."

By due and apt proceedings and due appointment and order of the Court, Austin Corbin was appointed Receiver in lieu of said Edwin M. Lewis, then deceased, and thereafter, December 14th, 1887, the then Receivers—George deB. Keim, Stephen A. Caldwell and Austin Corbin—were, by an order entered in the said suit and in other suits then pending in the same Court, released and discharged from the office of Receivers for The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company. Whereupon, said Receivers surrendered and delivered up the property and premises and the possession and control thereof, respectively, to The Philadelphia and Reading Railroad Company and to The Philadelphia and Reading Coal and Iron Company.

III.

January 3d, 1888, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, having resumed the possession, control and operation of their several properties, estates and franchises, free from the said injunction, executed severally the several Mortgages or Deeds of Trust below mentioned, wherein each conveyed separately, but in the same instrument, unto The Pennsylvania Company for Insurances on Lives and Granting Annuities, the several properties, estates and franchises therein mentioned, that is to say:—

1. A General Mortgage made to secure an issue of bonds of The Philadelphia and Reading Railroad Company to the amount of $100,000,000, bearing interest.

2. Another Mortgage, specifically made subject to the lien of the General Mortgage above mentioned, called "First Preference Income Mortgage," to secure an issue of the bonds of The Philadelphia and Reading Railroad Company to the amount of $25,000,000.

3. Another Mortgage, specifically made subject to the lien of the two preceding mortgages above mentioned in the order of their succession and priority, called "Second Preference Income Mortgage," to secure an issue of bonds of The Philadelphia and Reading Railroad Company to the amount of $26,140,518.

4. Another Mortgage, made specifically subject to the three mortgages above mentioned, in the order of their succession and priority respectively, called "Third Preference Income Mortgage," to secure an issue of the bonds of The Philadelphia and Reading Railroad Company, to an amount to be thereafter determined by the

Board of Managers of the said The Philadelphia and Reading Railroad Company, in accordance with the terms and limitations expressed and limited in the said "Third Preference Income Mortgage."

IV.

Default having been made by the said The Philadelphia and Reading Railroad Company in respect of certain of its obligations, February 20th, 1893, the Circuit Court of the United States for the Eastern District of Pennsylvania entered an order in a certain suit in equity wherein Thomas C. Platt, a citizen of the State of New York, was complainant, and The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and others were defendants, appointing Archibald A. McLeod, Edward M. Paxson and Elisha P. Wilbur Receivers "of said corporations and all the railroads and canals owned, leased or operated by the said The Philadelphia and Reading Railroad Company, and all the real and personal property of the said The Philadelphia and Reading Coal and Iron Company and of the said The Philadelphia and Reading Railroad Company of whatever kind and description and wheresoever situated," &c., and further ordering and directing that "an injunction be issued against the defendants and all other persons claiming to act by, through or under them, and all other persons to restrain them from interfering with the said Receivers, taking possession of, and managing the said property," &c.

Thereafter, by due and apt proceedings and due appointments and orders of the Court, entered in the said suit from time to time, Joseph S. Harris was appointed Receiver in place and stead of the said Archibald A. McLeod, who had resigned, and later John Lowber Welsh was appointed Receiver in place and stead of Elisha P. Wilbur, who had resigned.

V.

A Bill in Equity was exhibited in the said Circuit Court of the United States for the Eastern District of Pennsylvania by the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, respecting the property and premises so in the hands and possession of the said Receivers so appointed by the said Court, as aforesaid, setting up and describing the said General Mortgage of January 3d, 1888, the default of the said The Philadelphia and Reading Railroad Company to pay the moneys, or some of them, secured to be paid by the said bonds so issued by The Philadelphia and Reading Railroad Company, and by the said General Mortgage or Deed of Trust, praying the Court, among other things, to ascertain and fix the amount due and to become due to the holders of the said issue of bonds, to pronounce judgment for the same and in default of payment to order and direct the sale by the said Trustee of the said property and premises of the said The Philadelphia and Reading Railroad Company and of the said The Philadelphia and Reading Coal and Iron Company, so mortgaged, pledged and conveyed in and by the said General Mortgage of January 3d, 1888.

VI.

Pending the order, judgment and decree of the said Court, pursuant to the prayers for relief set forth in the said last above-mentioned Bill of Complaint, the holders of divers of the bonds and obligations of the said The Philadelphia and Reading Railroad Company, and of the shares of the capital stock of the said Company, appointed a Committee to represent them severally in the event of the decree then anticipated to be speedily entered in the said suit, for the sale of the said properties and premises of the said defendants, The Philadelphia and Reading Railroad Company and the said The Philadelphia and Reading Coal and Iron Company, and the foreclosure of their equity of redemption therein.

VII.

May 1st, 1896, a decree was entered in the said Court in the said suit, wherein The Pennsylvania Company for Insurances on Lives and Granting Annuities was plaintiff and The Philadelphia and Reading Railroad Company; The Philadelphia and Reading Coal and Iron Company; Thomas C. Platt, the complainant in the suit above mentioned; Edward M. Paxson, Jospeh S. Harris and J. Lowber Welsh, the said Receivers of the said companies so appointed as aforesaid, and others, were defendants, reciting the execution and delivery of the said above-mentioned General Mortgage and of the several Income Mortgages above mentioned and the execution and delivery of the said several issues of the bonds of the said The Philadelphia and Reading Railroad Company secured by the said several mortgages; the default of The Philadelphia and Reading Railroad Company in the payment of interest upon the said issue of General Mortgage Bonds, &c., and reciting, in Paragraph XX, the amount outstanding and unpaid of certificates of the said Receivers issued pursuant to the orders of the Court in the said cases then pending, wherein it was, among other things, ordered, adjudged and decreed that the properties, premises and franchises of every description, described in the said General Mortgage, or by the said decree adjudged to have become subject thereto, except the property sold since the date of said Mortgage under the powers therein reserved should be sold as thereinafter directed, and thereafter barring and foreclosing the equity of redemption of the said mortgages and all persons claiming under them, or either of them.

It was, in the said decree, directed that:—

1. Such sale may and shall be made by The Pennsylvania Company for Insurances on Lives and Granting Annuities, and that on an order confirming such sale and upon the payment or settlement of the purchase price,

the Trustees should grant and convey the property sold to the purchaser or purchasers, and execute and deliver a proper deed or deeds of conveyance thereof.

2. That the mortgaged property of The Philadelphia and Reading Railroad Company, including all property and credits acquired by the Receivers from the operation thereof, and that the mortgaged property of The Philadelphia and Reading Coal and Iron Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire property pledged to the complainant by the Reconstruction Trustees, as set forth in the Bill of Complaint in said case, should be sold severally and respectively in each case as a whole, subject, however, to the right of a majority in interest of the General Mortgage bonds outstanding by requisition in writing to be delivered to the Trustee at any time before the sale, to direct the Trustee to sell such properties in such parcels as they may deem best.

3. The fact of purchase and acceptance of the deed or deeds by the purchaser or purchasers shall not be construed as an election to accept any contract, agreement or term sold with the railroads and other property and franchises, which within ninety days after the delivery of the deed he shall not have elected to assume.

VIII.

Amongst the leasehold interests of the Railroad Company so sold, which were not taken and accepted by the purchasers, were the leases of the Catawissa Railroad Company, the Mine Hill and Schuylkill Haven Railroad Company and the Little Schuylkill Navigation Railroad and Coal Company, whose lines included the line of the East Mahanoy Railroad. Subsequently the East Ma-

hanoy Railroad Company made a new lease to the said Little Schuylkill Navigation Railroad and Coal Company, which afterwards made a new lease of its lines, including its said leased line, directly to the defendant, Philadelphia and Reading Railway Company, which also took and now holds new leases of their lines from the Catawissa Railroad Company and the Mine Hill and Schuylkill Haven Railway Company. The said leased lines of railroad, now forming part of the Railway Company's system, were therefore, acquired by it directly and not through the said decree of foreclosure or the sales made thereunder.

* * * * * * * * * *

XII.

May 24th, 1887, an order was entered in the suit of the Commonwealth of Pennsylvania, against The Philadelphia and Reading Railroad Company and others to No. 98 of the Equity Docket, in the Court of Common Pleas of Dauphin County, Pennsylvania, denying the motion of the Complainant for a preliminary injunction, since which time no further proceedings have been taken.

XIII.

The before mentioned orders of the Circuit Court of the United States, affecting The Philadelphia and Reading Railroad Company or The Philadelphia and Reading Coal and Iron Company and their Receivers; the several leases and agreements above recited, and the Mortgage or Deed of Trust made by the Reading Company to the Pennsylvania Company for Insurances on Lives and Granting Annuities, Trustee, may, at the hearing be referred to and read from by either side with like effect as though the same had, each and severally, been proved in evidence, in their entirety.

Mr. Reynolds offered in evidence copy of the Court proceedings on re-organization of the so-called Reading Company, as follows:—

DECREE OF FORECLOSURE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

In Equity. April Sessions, 1895. No. 9.

The Pennsylvania Company for Insurances on Lives and Granting Annuities

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company; Thomas C. Platt; Edward M. Paxson, Joseph S. Harris, and J. Lowber Welsh, Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company; and The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustees of a mortgage known as the Preference Income Mortgage.

And now, 1st May, 1896, the above cause coming on to be heard on the pleadings and proofs, and having been duly considered by the Court upon motion of John G. Johnson, solicitor for the complainant,

It is ordered, adjudged and decreed as follows, to wit:—

I. That the material allegations in the bill of complaint of The Pennsylvania Company for Insurances on Lives and Granting Annuities filed in this cause on the 2d day of March, 1895, are true.

II. That the defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, are corporations duly created by and existing under the laws of the State of Pennsylvania.

III. That on or about the third day of January, 1888, in pursuance of powers duly conferred by its stockholders and its directors, the said defendant, The Philadelphia and Reading Railroad Company, made, executed and delivered to the complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, its certain mortgage or deed of trust, herein called the General Mortgage, bearing date the third day of January, 1888, and thereby conveyed to said complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, and to its successor or successors in the trust, all the railroads of the said defendant, The Philadelphia and Reading Railroad Company, in and by the bill of complaint more specifically described, including the following railroads, to wit:—

The Main Line, the Lebanon Valley Branch, the Lebanon and Tremont Branch, the Mahanoy and Shamokin Branch, the Mt. Carbon Branch, the Schuylkill and Susquehanna Branch, the Port Kennedy Branch, the West Reading Branch, the Moselem Branch;

The leasehold interest in the Philadelphia, Germantown and Norristown Railroad;

The leasehold interest in the Chestnut Hill Railroad;

The leasehold interest in the Plymouth Railroad;

The leasehold interest in the Colebrookdale Railroad;

The leasehold interest in the East Pennsylvania Railroad;

The leasehold interest in the East Mahanoy Railroad Company and the Little Schuylkill Navigation Railroad and Coal Company;

The leasehold interest in the Schuylkill Valley Navigation and Railroad Company;

The leasehold interest in the Mill Creek and Mine Hill Navigation and Railroad Company;

The leasehold interest in the Mt. Carbon and Port Carbon Railroad;

The leasehold interest in the Mine Hill and Schuylkill Haven Railroad;

The leasehold interest in the canal and navigation works

of the president, managers and company of the Schuylkill Navigation Company;

The leasehold interest in the canal and navigation work of the Susquehanna Canal Company;

The leasehold interest in the railroad of the Catawissa Railroad Company;

The leasehold interest in the railroad of the Pickering Valley Railroad Company;

The leasehold interest in the railroad known as the Philadelphia and Chester Branch;

The leasehold interest in the main line of the railroad of the North Pennsylvania Railroad Company and the branches thereof known as the Delaware River Branch and the Doylestown Branch;

The leasehold interest in the railroad of the Delaware and Bound Brook Railroad Company, together with the branch known as the Trenton Branch;

The leasehold interest in the Schuylkill and Lehigh Railroad;

The leasehold interest in the Shamokin, Sunbury and Lewisburg Railroad;

Together with all the real estate of the said The Philadelphia and Reading Railroad Company wherever the same might be situated, and all real estate which might be thereafter acquired by the said The Philadelphia and Reading Railroad Company, and together with all other railroads which might be thereafter constructed or acquired by purchase, merger, or in any manner whatever by the said railroad company, and together with all other leasehold estates in any other railroads which might thereafter be acquired by lease, assignment, or in any manner whatsoever by said railroad company, and together with all branches, extensions, sidings and turnouts of all the said railroads and each of them then belonging or which might thereafter be constructed or acquired by The Philadelphia and Reading Railroad Company; and all lands, rights of way, rails, bridges, walls, fences, workshops, machinery, stations, offices, depots, depot grounds, engine houses, buildings, improvements,

tenements and hereditaments then owned or which might thereafter be acquired by The Philadelphia and Reading Railroad Company; together with all locomotives, tenders, passenger cars, baggage cars, freight cars, coal cars and all other engines, cars, carriages and rolling stock, tools, implements and materials then belonging or which might thereafter belong to the said The Philadelphia and Reading Railroad Company; and all the steam colliers, vessels, canal boats and barges of The Philadelphia and Reading Railroad Company, including certain vessels therein specifically named; and all ships, vessels, barges and boats then or thereafter belonging to the Railroad Company, together with all and singular the tolls, rents, revenues, issues, profits and income of the Philadelphia and Reading Railroad Company derived from said railroads, canals and other property, and all the corporate and other rights, privileges, appurtenances and franchises of The Philadelphia and Reading Railroad Company, acquired or to be acquired, connected with or relating to the mortgaged premises; and together with all the streets, ways, alleys, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of the thereby granted and mentioned premises and estates belonging and appertaining, or to belong and appertain, and the reversions and remainders, rents, issues, profits and income thereof; and all the estate, right, title, interest, profit, claim and demand of every nature and kind whatsoever of The Philadelphia and Reading Railroad Company, as well at law as in equity, of, in and to the same and every part and parcel thereof.

IV. That as further security for the payment of the principal and interest of the bonds secured by the said mortgage, The Philadelphia and Reading Railroad Company did thereby assign and pledge as collateral security to the complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, and its successors, one hundred and sixty thousand shares

of the capital stock of The Philadelphia and Reading Coal and Iron Company of the par value of fifty dollars each.

V. That as further security for the payment of the principal and interest of the bonds secured by said mortgage it was therein recited that the holders of said bonds were entitled to the security arising from the deposit by the Reconstruction Trustees of The Philadelphia and Reading Railroad Company under the terms of an agreement of even date with said mortgage, which was annexed to said mortgage, of the following bonds, viz.:—

General mortgage bonds of The Philadelphia and Reading Railroad Company, secured by a mortgage of the said railroad company dated July 1st, 1874, to the Fidelity Insurance, Trust and Safe Deposit Company, trustee, $24,457,000;

Income mortgage bonds of The Philadelphia and Reading Railroad Company, secured by a mortgage of said railroad company dated December 1st, 1876, to Edwin M. Lewis, trustee, $8,493,810;

First series five per cent. consolidated mortgage bonds of The Philadelphia and Reading Railroad Company, secured by mortgage of said railroad company dated August 26th, 1882, to The Pennsylvania Company for Insurance on Lives and Granting Annuities, of the city of Philadelphia, trustee, $184,606;

Second series five per cent. consolidated mortgage bonds of The Philadelphia and Reading Railroad Company, secured by said mortgage, dated August 26th, 1882, $6,131,404.

VI. That on or about the third day of January, 1888, the defendant, The Philadelphia and Reading Coal and Iron Company, for the better securing of the payment of the principal and interest of the bonds secured by said General Mortgage, did, in pursuance of resolutions duly adopted by its stockholders and by its board of directors, join in said General Mortgage, and did thereby convey to the complainant, The Pennsylvania Company

for Insurances on Lives and Granting Annuities, as trustee, all the coal lands, coal leases, iron ore lands, furnace properties and other real estate in the said General Mortgage and in said bill more specifically described.

Together with all the other real estate of The Philadelphia and Reading Coal and Iron Company wherever the same might be situate, and all real estate which might be thereafter acquired by said The Philadelphia and Reading Coal and Iron Company; together with all railroads, and all branches, extensions, sidings and turnouts of any railroads then belonging to or which might thereafter be constructed or acquired by said The Philadelphia and Reading Coal and Iron Company; and all lands, coal leases, iron ore leases, mines, collieries, breakers, engines, workshops, machinery, offices, buildings, improvements, tenements and hereditaments then owned or which might thereafter be owned or acquired by The Philadelphia and Reading Coal and Iron Company; together with all the locomotives, tenders, coal cars, carriages and all other engines, cars, rolling stock, tools, implements, horses, mules, and materials then belonging or which might thereafter belong to The Philadelphia and Reading Coal and Iron Company; together with all and singular the tolls, rents, revenues, issues, profits and income of the said The Philadelphia and Reading Coal and Iron Company and derived from said mortgaged property; and all the corporate and other rights, privileges, appurtenances and franchises of the said The Philadelphia and Reading Coal and Iron Company, acquired or to be acquired, connected with or relating to the said lands, coal or iron mines, or other premises, or any of them; together with all the streets, ways, alleys, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatever unto any of the thereby granted and mentioned premises and estates belonging and appertaining, or to belong and appertain, and the reversions, remainders, rents, issues, profits and income thereof;

and all the estate, right, title, interest, profit, claim and demand of whatsoever kind or nature of the said The Philadelphia and Reading Coal and Iron Company, as well at law as in equity, of, in and to the same and every part and parcel thereof.

VII. That by said mortgage the said The Philadelphia and Reading Coal and Iron Company, as further collateral security for the bonds secured by said General Mortgage, subject to a prior pledge thereof by it to The Philadelphia and Reading Railroad Company under a mortgage dated July 1st, 1874, did assign to the complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, the following shares of capital stock of corporations, viz:—

1. Fifty-six thousand six hundred and eighty-three shares of the capital stock of the Preston Coal and Improvement Company, of the par value of fifty dollars, amounting in the aggregate to	$2,834,150 00
2. Sixty-three thousand five hundred and thirty-seven shares of the capital stock of the Fulton Coal Company, of the par value of five dollars, amounting in the aggregate to	317,685 00
3. Fifty thousand five hundred and twenty-two shares of the capital stock of the Locust Gap Improvement Company, of the par value of ten dollars, amounting in the aggregate to	505,220 00
4. One hundred and eighteen thousand three hundred and fifty-four shares of the capital stock of the Tremont Coal Company, of the par value of twenty-five dollars, amounting in the aggregate to	2,958,850 00
5. Fifty-nine thousand seven hundred and twenty-seven shares of the capital stock of the Mammoth Vein Coal and Iron Company, of the par value of ten dollars, amounting in the aggregate to	597,270 00
6. Forty-seven hundred and sixteen shares of the capital stock of the Delaware Coal Company, of the par value of fifty dollars, amounting in the aggregate to	235,800 00

VIII. That since the execution of the said general mortgage The Philadelphia and Reading Railroad Company has under the power reserved in the said general mortgage, sold and conveyed certain properties specifically described in a list marked "Exhibit 25, H. C. L., Examiner, 12/9/95," contained in the Examiner's report in this cause.

IX. That since the execution of the said general mortgage said defendant The Philadelphia and Reading Railroad Company, through its officers or by its Receivers, has acquired real estate and has constructed or has acquired, by purchase, merger or in some other manner, other railroads; and has acquired leasehold estates in other railroads by lease, or by assignment, or otherwise; and has acquired various lands and interests in lands, rights of way, tenements and hereditaments, and also various rolling stock and equipment, and ships, vessels, barges, and boats, and interests therein and rights thereto, and has acquired various corporate and other rights, privileges, appurtenances and franchises.

That among the real estate and interests therein so acquired is that more specifically described in a paper marked "Exhibit 23, H. C. L., Examiner, 12/9/95," and included in the Examiner's report in this cause, and also, in the supplemental general mortgages appended to said Examiner's report, and also that more specifically described in the paper marked "Exhibit 24, H. C. L., 12/9/95," and included in the Examiner's report in this cause, and also all the property acquired for the corporate purposes of the said defendant The Philadelphia and Reading Railroad Company, and now held by or for it.

That each and every of said properties, rights and interests of every character, upon the acquisition thereof, in whatsoever manner acquired, by the said defendant The Philadelphia and Reading Railroad Company, or for its benefit or in trust for it, became, and now is, subject to the lien of said general mortgage.

That in the course of the operation by said defendant Railroad Company of the various railroads to it leased, constituting part of the mortgaged property, said Railroad Company made advances of large amounts, of which the right of repayment, so far as the same is repayable, is subject to the lien of said General Mortgage.

X. That since the execution of the said General Mortgage The Philadelphia and Reading Coal and Iron

Company has sold and conveyed certain surface rights, real estate and interests therein.

XI. That since the execution of the said General Mortgage the defendant, The Philadelphia and Reading Coal and Iron Company, has acquired certain real estate and has constructed or acquired certain railroads, branches and extensions, and has acquired certain lands, yards, depots and wharves, coal, iron ore and other leases, mines, collieries, colliery improvements, rolling stock and other equipment and material, buildings, improvements, tenements and hereditaments.

That among the properties so acquired are those more specifically described in a paper marked "Exhibit No. 26, December 9, 1895, H. C. L.," included in the Examiner's report in this cause; and also in the supplementary general mortgages appended to the said Examiner's report; and also in a list marked "Exhibit No. 28, December 9, 1895, H. C. L.," included in the Examiner's report.

That each and every of said properties, rights and interests of every character, upon the acquisition thereof, in whatsoever manner acquired by the said defendant, The Philadelphia and Reading Coal and Iron Company, through its officers or by its Receivers, or for its benefit or in trust for it, became and, except as heretofore sold and conveyed under the powers reserved in the General Mortgage, is now subject to the lien of said General Mortgage.

XII. That on the third day of January, 1888, there was conveyed to the complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, by certain reconstruction trustees, as set forth in the bill filed, as security, *inter alia*, for the payment of the principal and interest of the bonds secured by the said General Mortgage, the following property, viz.:—

1. One million four hundred and ninety-three thousand two hundred and forty-nine dollars and seventy-three cents of the mortgage loans of the Schuylkill Navigation Company, commonly known as the loans of 1872–1897..... $1,493,249 73

2. Three million eight hundred and forty-nine thousand eight hundred and twenty-eight dollars and sixty-seven cents of the mortgage loans of the Schuylkill Navigation Company, commonly known as the loans of 1882–1907	$3,849,828 67
3. One million and sixty-two thousand dollars of the loan of the Schuylkill Navigation Company, commonly known as the loan of 1895	1,062,000 00
4. Two hundred and fourteen thousand five hundred dollars of the loan of the Schuylkill Navigation Company, commonly known as the Improvemnt Loan	214,500 00
5. Six hundred and sixty-nine thousand five hundred and fifty dollars of the boat and car loan of the Schuylkill Navigation Company due in 1913	669,550 00
6. Five hundred and seventy-nine thousand three hundred and fifty dollars of the boat and car loan of the Schuylkill Navigation Company due in 1915	579,350 00
7. Sixty-four thousand five hundred and eighty shares of the preferred stock of the Schuylkill Navigation Company, of the par value of fifty dollars, amounting in the aggregate to	3,229,000 00
8. Twelve thousand five hundred and fifty-four shares of the common stock of the Schuylkill Navigation Company of the par value of fifty dollars, amounting in the aggregate to	627,700 00

all of which property became and is subject to the lien of said General Mortgage.

XIII. That the said defendant, the said Philadelphia and Reading Railroad Company, duly made, executed and delivered bonds secured by the said General Mortgage, to the amount of forty-six million four hundred and fifty-six thousand dollars, and fractional scrip exchangeable for said bonds amounting to nineteen thousand one hundred and eighty-eight dollars and seventy-seven cents, making in all forty-six million four hundred and seventy-five thousand one hundred and eighty-eight dollars and seventy-seven cents, said bonds being denominated "General Mortgage Bonds," each being dated the third day of January, 1888, and each being payable on the first day of January, 1958, in gold coin of the United States of America of the standard weight and fineness of such coin at the date of said bond, with interest at the rate of four per cent. per annum payable half-yearly on the first days of July and January in each year in like gold coin on the delivery of the proper coupon

therefor, without deduction for taxes; that all of said bonds were duly issued by the said defendant, The Philadelphia and Reading Railroad Company, and authenticated by a certificate thereon signed by the complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, of the city of Philadelphia, as trustee, in accordance with the provisions of said bond and of said General Mortgage, and all of said bonds and said fractional scrip became when issued valid obligations of said defendant, The Philadelphia and Reading Railroad Company, and have been negotiated and delivered for value to a large number of persons who are now the lawful holders and owners thereof for value.

XIV. That on February 20th, 1893, this Court, upon a bill filed by Thomas C. Platt, a citizen and resident of the State of New York, against the defendants in this cause, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, and against the complainant in this cause, The Pennsylvania Company for Insurances on Lives and Granting Annuities, appointed Receivers of all the real and personal property of the said The Philadelphia and Reading Railroad Company and of the said The Philadelphia and Reading Coal and Iron Company, and said Receivers, or their successors in the trust subsequently appointed, have been ever since, and now are, in possession of all the property of the said The Philadelphia and Reading Railroad Company and of the said The Philadelphia and Reading Coal and Iron Company.

XV. That said defendant, The Philadelphia and Reading Railroad Company, made default in the payment of the coupons and interest upon the said General Mortgage bonds and of the interest on said fractional scrip which fell due on the first day of July, 1893, on the first day of January, 1894, on the first day of July, 1894, on the first day of January, 1895, on the first day of July, 1895, and on the first day of January, 1896, respectively,

and the said Receivers have been unable out of any assets in their possession to make payment of said coupons or interest.

XVI. That on or about the first day of July, 1893, demand in writing was made upon said The Philadelphia and Reading Railroad Company on behalf of James Bell, holder of four hundred and eighteen coupons of said General Mortgage bonds, of which he was then possessed, for the payment of the interest which fell due on the first day of July, 1893, on said bonds, and the said The Philadelphia and Reading Railroad Company neglected and refused for a period exceeding three months after such demand, to pay the interest aforesaid; and thereafter, in accordance with the terms of said General Mortgage, a request was made in writing to The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee, by the holders of more than one-tenth in amount of the bonds secured by said General Mortgage then outstanding upon which default in the payment of interest had been made, that the said trustee take possession of the mortgaged property and operate and sell the same in accordance with the terms of the said General Mortgage.

XVII. That thereupon the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, became and is entitled to enforce all the rights, remedies, lien and security afforded by said General Mortgage.

XVIII. That the amounts of coupons and interest due on said General Mortgage bonds and fractional scrip are as follows:—

Coupons and interest due January 1st, 1894	$923,503 78
Interest from January 1st, 1894, to date of this decree	129,290 54
Coupons and interest due July 1st, 1894	923,503 77
Interest from July 1st, 1894, to date of this decree	101,585 42
Coupons and interest due January 1st, 1895	923,503 78

Interest from January 1st, 1895, to date of this decree.....	$ 73,880 30
Coupons and interest due July 1st, 1895	923,503 77
Interest from July 1st, 1895, to date of this decree.....	46,175 18
Coupons and interest due January 1st, 1896.....	923,503 78
Interest from January 1st, 1896, to date of this decree.....	18,470 08
Total.....	$4,986,920 40

XIX. That said General Mortgage is a valid and subsisting lien on all the railroads, franchises, real estate, rolling stock and equipment and other personal property and choses in action therein described or by this decree adjudged to have become subject to the lien thereof, with the exception of the property sold since the date of said mortgage under the powers therein reserved.

XX. That under and in pursuance of orders of this Court there were duly issued and are now outstanding and unpaid certain Receivers' certificates of indebtedness amounting in the aggregate, on the fourteenth day of December, 1895, to the sum of three million, seven hundred and six thousand, four hundred and seven dollars and twenty-nine cents of principal, and bearing interest at the rate of six per cent. per annum, the holders of which Receivers' certificates are entitled to a lien upon the railways, property and franchises of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company prior and superior to the lien of said General Mortgage to the extent that the assets or proceeds of assets in the Receivers' hands may be insufficient to discharge the same. That in addition to said Receivers' certificates there exists a large amount of indebtedness and obligations incurred, and other liabilities and obligations will be hereafter incurred, by the said Receivers in the operation and care of the railroad and property of the said The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, the holders of which indebtedness and obligations are also entitled and will be entitled to the payment thereof (or so much thereof as the said Receivers shall not be able to pay out of the assets or out of the

proceeds of assets in their hands) out of the proceeds of a sale of said railroads, property and franchises in priority to the holders of the bonds secured by said General Mortgage, and that such indebtedness and obligations on the fourteenth day of December, 1895, amounted approximately to one million, six hundred and four thousand, nine hundred and forty-one dollars and sixty-one cents, and that the holders of the bonds secured by said General Mortgage are entitled, and it is necessary for their protection to have the railroads, property and franchises of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company sold without delay.

XXI. That out of the tolls, rents, revenues, issues, profits and income of the said Railroad Company, derived from its railroads, canals and other properties, and also out of the tolls, rents, revenues, issues, profits and income of the said The Philadelphia and Reading Coal and Iron Company, derived from its mortgaged property, the said Receivers necessarily have made, and will continue to make, large disbursements in discharge of the indebtedness and the obligations of the Railroad Company and of the Coal Company, and in the purchase or acquisition of new equipment, to which or to part of which the title is represented by car-trust obligations, or in the course and conduct of the business of the mining of coal, of which large amounts are now held, and will be received, by the said Receivers, subject to contracts of sale, pledge or other disposition thereof in the regular conduct of the business; and that all of the properties, coal and choses in action so acquired by the said Receivers, and any profits or income derived, or to be derived, by said Receivers from the operation of said railroad and coal properties, are and will be subject to the lien of said General Mortgage.

Now, in consideration thereof, it is—

Ordered, adjudged and decreed that the defendant, The Philadelphia and Reading Railroad Company, pay,

or cause to be paid, within twenty days after the entry of this decree, to The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee in the aforesaid General Mortgage, or into the registry of this court, for the use and benefit of the holders of said bonds and fractional scrip issued under said General Mortgage and the coupons for interest thereon, the sum of $4,986,920.\frac{40}{100}$, with interest thereon from the date of this decree to the date of payment.

In case the said amount shall be paid as herein decreed, then any of the parties hereto may apply to this Court for such further relief and for such further directions as may be just and equitable.

It is further ordered, adjudged and decreed that in default of such payment by the defendant, The Philadelphia and Reading Railroad Company, or by any one claiming under it, or by any one for its account, or of payment by The Philadelphia and Reading Coal and Iron Company, or by any one claiming under it or by any one for its account, within the time directed as aforesaid, the properties, premises and franchises of every description, described in said General Mortgage, or by this decree adjudged to have become subject thereto, except the property sold since the date of said mortgage under the powers therein reserved, shall be sold as hereinafter directed, and all the right, title, estate, interest and equity of redemption of the defendant, The Philadelphia and Reading Railroad Company, and of the defendant, The Philadelphia and Reading Coal and Iron Company, and of all persons claiming or to claim under them, or either of them, and of the said complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under said General Mortgage, of, in or to said mortgaged property and franchises and every part and parcel thereof, shall be forever barred and foreclosed; and upon such sale of the mortgaged premises, the whole principal sum of each and all of the then outstanding General Mortgage bonds intended to be by said mortgage secured, shall be deemed and taken to be forthwith due and payable.

Such sale may and shall be made by The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under the said General Mortgage; and said trustee, on an order confirming such sale, and upon payment or settlement of the purchase price bid as herein provided, shall grant and convey the property sold to the purchaser or purchasers freed from all and every the trusts by the General Mortgage created, and without liability on the part of such purchaser or purchasers to see to the application of the purchase money, and shall execute and deliver a proper deed or deeds of conveyance thereof.

The entire mortgaged and pledged property of every description of said The Philadelphia and Reading Railroad Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire mortgaged and pledged property of every description of the said The Philadelphia and Reading Coal and Iron Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire property pledged to the complainant by the Reconstruction Trustees, as set forth in the bill of complaint in this cause, shall be sold severally and respectively in each case as a whole; subject, however, to the right of a majority in interest of the holders of the General Mortgage bonds outstanding by requisition in writing to be delivered to the Trustee at any time before the sale to be made hereunder, to direct the Trustee to sell such properties in such parcels as they may deem best.

The sale shall be at public auction to the highest and best bidder or bidders, at the Old Station on Callowhill Street, between Thirteenth Street and Board Street, in the City of Philadelphia, in the State of Pennsylvania (that being upon the premises sold), on a day and at an hour to be fixed by the said Trustee. Three months' notice of such sale shall be given by publication, containing a brief general description of the property to be sold and referring to this decree, to be made once a week

in at least two daily newspapers of general circulation printed, regularly issued and published in the City of Philadelphia, in the State of Pennsylvania, and in the City of New York, in the State of New York, and in the City of London, in the Kingdom of Great Britain.

The Trustee may adjourn or postpone said sale, and may, without further notice, proceed with said sale on any day to which the same may thus have been adjourned, and may give such further notice of sale in addition to the notice above described as it may think proper.

The Trustee shall receive no bid in respect of the mortgaged property, or of any parcel thereof separately offered, from any one offering to bid who shall not first deposit, as pledge that he will make good his bid in case of its acceptance, the sum of $200,000 in money, or in certified check or checks on a national bank or banks in the City of Philadelphia or the City of New York, or $400,000 par value of the bonds secured by said General Mortgage with all unpaid coupons attached. The deposit so received from any unsuccessful bidder shall be returned to him when the property shall be struck down, and the deposit received from the successful bidder shall be held by the Trustee subject to the further order of this Court, to be applied on account of the purchase price of the property for which such bid was made.

On the acceptance of any bid the purchaser shall forthwith deposit with said Trustee the sum of $500,000 in money, or in certified check or checks on any national bank or banks, or trust company or trust companies, in the city of Philadelphia or the city of New York; or $1,000,000 par value of the bonds secured by said General Mortgage; but any cash or bonds which may have been previously deposited by the successful bidder as a pledge that he would make good his bid shall be received on account of the amount so required of him on the acceptance of his bid.

In case any bidder or purchaser shall fail to make good his bid upon its acceptance by the Trustee, or shall fail, after such acceptance, to comply with any order of the

court relating to the payment thereof, or the consummation of the purchase, then the sums in cash or bonds deposited by such purchaser or purchasers, as hereinbefore provided, shall be forfeited as a penalty for such failure, and shall be applied towards the payment of the expenses of a resale, and towards making good any deficiency or loss in case such property shall be sold at a price less than that bid at the prior sale.

If the court shall not confirm the sale for which a deposit has been made, such deposit shall be returned to the bidder.

The complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, and any holder or holders of bonds secured by said General Mortgage, or any party to this suit, may bid and purchase at such sale.

The fact of purchase and acceptance of the deed or deeds by the purchaser or purchasers shall not be construed as an election to accept any contract, agreement or term sold with the railroads and other property and franchises, which within ninety days after delivery of the deed he shall have elected not to assume.

Upon confirmation of any sale by the court, the purchaser shall make such further payment or payments in cash, on account of his bid, as from time to time the Court may direct. The purchaser of any parcel may satisfy and make good any part of his bid not required to be paid in cash by turning in to be canceled or credited as hereinafter provided any of the bonds and matured and unpaid interest secured by said General Mortgage and held by such purchaser, counting such bonds and interest for that purpose at the sum which shall be payable to the holder thereof out of the net proceeds of such sale of such parcel as his just share of such net proceeds after allowing for the proportion of the payment which may be required in cash; and, if such share of such net proceeds shall be less than the amount then due upon such bonds, such purchaser may make such settlement by receipting on such bonds the amount to be credited

thereon. The Court reserves the right to resell any parcel upon such notice as the Court shall direct in case the purchaser thereof shall omit to make any payments on account of any unpaid balance of the purchase price within thirty days after the entry of an order requiring such payment.

> "The purchaser or purchasers of the property of the Railroad Company subject to the General Mortgage, sold hereunder, shall as part consideration and in addition to the sum bid for such property, take the same and receive the deed or deeds therefor on the express condition that, to the extent that the assets or the proceeds of assets in the Receivers' hands shall be insufficient, he or they, or his or their successors or assigns, shall pay, satisfy and discharge any unpaid compensation which shall be allowed by the court to the Receivers, and any indebtedness, obligation or liabilities which shall have been contracted or incurred by the Receivers,before they shall have delivered possession of the property sold, whether or not represented by certificates; and also any indebtedness or liability contracted or incurred by said defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, or either of them, in the operation of the mortgaged property, prior to the appointment of the Receivers, which is prior in lien or superior in equity to said General Mortgage, and which shall not be paid or satisfied out of the income of the property in the hands of the Receivers, or out of the assets or out of the proceeds of the assets in their hands upon the court adjudging the same to be prior in lien or superior in equity to said mortgage and directing payment thereof."

All payments for any such purpose made by the purchaser in advance of the final accounting and discharge of the Receivers shall be treated as advances, and subject to final adjustment on such accounting.

In the event that said purchaser or purchasers, after demand made, shall refuse to pay any before-mentioned indebtedness or liability, the person holding the claim therefor, upon fifteen days' notice to said purchaser or purchasers, their successor or successors, assign or assigns, may file his petition in this court to have such claim enforced against the railroad property aforesaid in accordance with the usual practice of this court in relation to claims of a similar character; and such purchaser or purchasers, his or their successor or successors, assign or assigns, shall have a right to appear and make defense to any claim, debt or demand so sought to be enforced; and any party shall have the right to appeal from any judgment, decree or order made thereon. For the purpose of enforcing the foregoing provisions of this decree, jurisdiction of this cause is retained by this court, and the court reserves the right to retake and resell said railroad property in case the purchaser or purchasers, his or their successors or assigns, shall fail to comply with any order of the court for the payment of such prior indebtedness or liability within thirty days after the service of the copy of such order.

The Receivers within two weeks prior to the time of sale hereunder, and as soon as practicable, shall file with the clerk of this court:

(1) A statement showing, as definitely as practicable, all indebtedness, obligations and liabilities contracted or incurred by them then remaining unpaid;

(2) A statement showing, as definitely as practicable, all indebtedness or liabilities contracted or incurred by said defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, or either of them, in the operation of the mortgaged property prior to the appointment of the Receivers, and which, so far as they are informed, are claimed to be prior in lien or superior in equity to said General Mortgage;

(3) A statement showing as definitely as practicable the assets, which they are hereinafter directed to sell.

But each of such statements shall be advisory only, and nothing therein contained shall be binding upon the purchaser or purchasers at said sale, nor shall such statements constitute grounds for a release from any bid because of any representation therein or omission therefrom.

Any such claims for indebtedness or liabilities which shall not have been included in such statement of the Receivers, or which shall not have been presented in writing to the Receivers, or filed with the clerk of this court prior to the time of delivery of possession of such property, shall be presented for allowance and filed within six months after the first publication by the Receivers of a notice to the holders of such claims to present the same for allowance. The Receivers shall publish such notice at least once a week for a period of six weeks in one or more newspapers published in each of the cities of Philadelphia, Pa.; New York, N. Y., and Reading, Pa., on the request of any purchaser or purchasers of the railroad property, after delivery of possession of such property to such purchaser, and any such claim which shall not be so presented or filed within the period of six months after the first publication of such notice shall not be enforcible against said Receivers, nor against any property sold, nor against any purchaser or purchasers, his or their successors or assigns.

Any such purchaser or purchasers of the railroad property, and his or their successors and assigns, shall have the right to enter his or their appearance in this court, and he or they, or any of the parties to this suit, shall have the right to contest any claim, demand, or allowance existing at the time of the sale and then undetermined, and any claim or demand which thereafter may arise or be presented which would be payable by such purchaser or purchasers, his or their successors or assigns, or which would be chargeable against the parcel purchased in addition to the amount bid at the sale, and he or they may appeal from any decision relating to any such claim, demand or allowance.

The purchaser or purchasers of any parcel shall also take the same subject to the performance by him or them, or his or their successors and assigns, of all pending contracts theretofore lawfully made by the Receivers, in respect thereof.

It is further ordered, adjudged and decreed that the funds arising from the sale of said mortgaged premises shall be applied by said trustee as follows:—

I. To the payment of the costs of this cause and of all proper expenses attendant upon said sale or sales, including the payment of all charges, compensations, allowances and disbursements of the complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under said General Mortgage, and its solicitors and counsel, and of the Receivers, their solicitors and counsel; and also all such other proper allowance, compensation and disbursements to the parties or their counsel as the court shall order. All the payments to be made under this subdivision shall be hereafter fixed and allowed and taxed by this Court.

II. To the payment of said Receivers' certificates and liabilities issued or incurred under the order of this court, together with the interest accrued thereon to the date of payment, so far as the same shall be payable out of the proceeds of the mortgaged property.

III. The balance of the fund realized from said sale shall first be applied to the payment of the interest due and accrued upon said General Mortgage bonds and fractional certificates, with interest at the rate of six per cent. per annum from the respective dates at which said coupons and interest became due and payable, to the date of payment.

IV. The balance of the fund realized from said sale shall next be applied to the payment of the principal of

said General Mortgage bonds and fractional certificates, with interest thereon from the first day of January, 1896, at the rate of four per cent. per annum, to the date of payment.

V. In case the balance of the fund realized from said sale shall be insufficient to pay said coupons and interest, and the principal of said bonds and fractional certificates, then each of said bonds and fractional certificates presented for payment shall be stamped by the Trustee so as to show the amount which has been paid upon the principal of such bonds and fractional certificates; or, if presented by the purchaser or purchasers, the amount credited as paid thereon; and shall be returned to the holders thereof. Each detached coupon, when presented, shall be stamped or canceled in like manner.

VI. If, after making all of the above payments, there shall be a surplus, then the same shall be applied as the court thereafter may order and direct.

Whenever the Trustee shall be prepared out of the proceeds of sale to pay any money on account or in full of the General Mortgage bonds and fractional certificates, it shall give notice of the time when and place where it will be prepared to make such payment by publication at least once a week for two successive weeks in at least one newspaper in each of the following cities: Philadelphia, Pa.; New York, N. Y., and Reading, Pa.; and no holder of any bond or fractional certificate or coupon, of the payment of which notice shall have been so given, who shall have failed to present the same for payment, as required by such notice, shall be entitled to the payment of any interest thereon after that date out of the proceeds of the sale.

It is further ordered, adjudged and decreed that upon payment of the purchase price bid by the purchaser or purchasers of any such parcel, or upon making such provision as the court shall approve for the pay-

ment thereof, the said Trustee shall execute a deed or deeds conveying such property and franchises to such purchaser or purchasers, or his or their successors or assigns, and that on the execution and delivery of such deed or deeds the grantee shall be let into the possession of the premises conveyed, and the Receivers shall deliver such property over to the purchaser or purchasers, his or their successors or assigns, together with any property and income acquired or received by the Receivers since the commencement of this suit in the management or operation of the part of the mortgaged premises embraced in such conveyance, subject, nevertheless, to the condition that the court may retake and resell the property in case any such purchaser or purchasers, his or their successors or assigns respectively, shall fail to pay any of the balance of the purchase price remaining unpaid, or to comply with any order of the court with respect to the payment of the prior indebtedness, obligations and liabilities, as hereinbefore provided, within thirty days after the service of a copy of such order.

The purchaser or purchasers of any such parcel, and his and their successors and assigns respectively, after such delivery of such premises, shall hold, possess and enjoy the same, and all the rights, privileges, immunities and franchises appertaining hereto, as fully and completely as said defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, or either of them, now hold or enjoy the same, or held or enjoyed or were entitled to hold or enjoy the same at the time of the execution of said General Mortgage, or at any time since; and the purchaser or purchasers, and his or their successors and assigns respectively, shall thereupon be entitled to have and hold the premises so conveyed free and discharged from the lien and incumbrance of said General Mortgage dated January 3d, 1888, and the various supplements thereto dated resepctively April 10th, 1888, January 2d, 1889, January 2d, 1890, and January 2d, 1892; and from the claims of all other parties to this

suit and those claiming under them, save only as herein expressly reserved, but subject to such claims and allowances as hereafter shall be adjudged to be prior in lien or superior in equity to said mortgage, and which, as hereinbefore provided, may be required to be paid in addition to the purchase price bid.

It is further ordered, adjudged and decreed that the defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, shall, at the time of the execution of any such deed or deeds by said Trustee, as a further assurance to the grantee therein and to his successors and assigns, execute their deed or deeds or join with said Trustee in the execution of the deed or deeds to be made by it, and shall thereby convey and release to the purchaser or purchasers all of their right, title and interest in such property and franchises conveyed to such grantee and to his successors and assigns by said Trustee, and the right of each of them; and further, that at the time of the delivery of any such deed or deeds by the Trustee, the Receivers shall make, execute and deliver to such purchaser or purchasers a good and sufficient deed or deeds of conveyance, bills of sale or other proper assurances in writing of any and all property of the defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, vested in or standing in the name of the said Receivers, or to which said Receivers in any manner have acquired title, or of which they shall be possessed.

The said Trustee is hereby required promptly to make a full report of its proceedings under the order of sale herein and such supplemental reports, from time to time, as may be necessary or desirable to show fully its action in the premises.

It is further ordered, adjudged and decreed that for the purpose of meeting and discharging the proper expenses of the sale or sales to be made hereunder, the costs of the

cause in which said Receivers were appointed and of this cause, including the compensation of the Receivers, their solicitors and counsel, and such proper allowance, compensation and disbursements to any of the parties, or their counsel, as the Court shall order, and the payment of the Receivers' certificates and liabilities issued or incurred under the orders of this Court, either in this suit on in the suit in which said Receivers were appointed, and of all other obligations and expenses properly incurred or payable by said Receivers with interest thereon, all of which are primarily payable out of the assets or proceeds of assets in the hands of the Receivers in this cause, to the extent that such assets or proceeds of assets shall be sufficient to meet and discharge the same, the Receivers sell on the day and at the place appointed by the Trustee for the sale of the mortgaged premises, and immediately prior to such sale, all the assets of every nature and description in their hands not hereinbefore adjudged to be subject to the lien of the general mortgage; that such sale shall be made for cash at public auction to the highest and best bidder or bidders, in such parcels as the Receivers acting under the direction of the Special Master may deem expedient, the Receivers being hereby authorized to offer such property either as an entirety or in separate parcels, or alternately, as to them shall seem most likely to secure the highest and best price therefor; that the Receivers give brief notice of such sale by reference to the foregoing provision, and stating that more specific statement of such assets will, as hereinbefore required, be filed before such sale, which notice shall be by publication for a period of six weeks in the same manner as is hereinbefore directed in respect of the sale to be made by the trustee of the mortgaged property; that the Receivers receive no bid from any one offering to bid who shall not first deposit, as a pledge that he will make good his bid or bids in case of acceptance, the sum of $100,000, in money, or in certified check or checks on a national bank or banks, or trust company or trust companies, in the City of Philadelphia or the

City of New York; that on payment of the purchase price the Receivers deliver to the purchaser or purchasers the assets so sold, free from further claim or liabilitiy of any character in respect of such purchase; and that otherwise said sale shall be in all respects upon terms similar to those hereinbefore prescribed in respect of the sale to be made by the Trustee of the mortgaged premises.

It is further ordered, adjudged and decreed that the proceeds of such assets shall be applied by said Receivers as follows:—

I. To the payment of all proper expenses attendant upon said sale or sales, and of the costs of the cause in which said Receivers were appointed, and of this cause as above provided. All the payments to be made under this subdivision shall be hereafter fixed and allowed and taxed by this Court.

II. To the payment of said Receivers' certificates and liabilities heretofore issued or incurred under the order of this Court, and of all other obligations and expenses incurred or payable by said Receivers, together with the interest accrued thereon to the date of payment, so far as such proceeds shall be sufficient for such purposes.

It is further ordered adjudged and decreed that all claims and equities of the Philadelphia, Reading & New England Railroad Company, and the holders of its bonds and shares, be and the same are hereby reserved for further consideration.

It is further ordered, adjudged and decreed that until the confirmation of the sale of the mortgaged property under this decree, the Receivers continue in possession thereof, and to discharge the duties imposed upon them by the order of their appointment, with the rights and powers thereby conferred.

It is further ordered, adjudged and decreed that all questions not hereby disposed of, including the discharge of the Receivers and the settlement of their accounts, are hereby reserved for future adjudication; that any party to this cause, and also any intervening petitioner who has heretofore duly filed his petition herein, and any holder of any indebtedness, obligation or liability contracted or incurred by the Receivers or by the defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, or either of them, may at any time apply to this court at the foot of this decree for futher relief, as well as for such modifications thereof in respect to the terms or conditions of said sale, or to the distribution of the proceeds thereof, or in respect to any other matter which may affect the rights of any such parties or persons, as may be just and proper, and jurisdiction in this cause is retained by this court for that purpose, and for the purpose of enforcing all the provisions of this decree.

(Signed) M. W. ACHESON,
Circuit Judge.

RECEIVERS' REPORT OF SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,	
vs.	In Equity.
The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.	April Sessions, 1895. No. 9.

TO THE HONORABLE THE JUDGES OF SAID COURT IN EQUITY SITTING:

On the first day of May, 1896, a decree of foreclosure and sale was entered in the above-entitled cause, wherein and whereby, among other things, it was ordered, adjudged and decreed that on the day and at the place appointed by the above-named complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, the trustee named in the mortgage or deed of trust dated January 3d, 1888, known as the General Mortgage, in said decree described, for the sale of the mortgaged premises, and immediately prior to such sale by said trustee, the Receivers of the property of the above-named defendants, The Philadelphia and Reading Railroad Company, and The Philadelphia and Reading Coal and Iron Company, should sell all the assets of every nature or description in the hands of said Receivers and not by said decree adjudged to be subject to the lien of said General Mortgage.

Pursuant to the said decree we, the said Receivers in said decree mentioned, do report as follows:—

First.—The above-named complainant, the trustee named in said General Mortgage, having given notice that in pursuance of said decree and in the exercise of the powers and duties conferred and imposed by said General Mortgage it would sell said mortgaged property at the old station on Callowhill Street, between Thirteenth Street and Broad Street, in the city of Philadelphia, in the said State of Pennsylvania (that being upon the premises sold), upon Wednesday, the twenty-third day of September, 1896, at twelve o'clock noon of that day, upon the terms stated in said decree and in said notice of sale by said trustees, whereupon we, the undersigned, the said Receivers in said decree mentioned, gave notice that at the said place appointed by the said trustee for the sale of the mortgaged premises, and on the day so appointed for such sale, and immediately prior thereto, to wit, at ten o'clock in the forenoon of Wednesday, September 23d, 1896, we would sell all the assets of every nature or description in our hands as such Receivers and not by said decree adjudged to be subject to the lien of said General Mortgage; such notice of sale referring to the provisions of said decree and to a statement filed August 1st, 1896, in the office of the clerk of this court, showing as definitely as practicable the assets to be embraced in the sale of which such notice was given; which notice was given by publication for a period of six weeks, in the same manner as in said decree directed in respect of the sale to be made by the trustee of the mortgaged property, and being published upon August 14th, 21st and 28th and September 4th, 11th and 18th in the Philadelphia *Legal Intelligencer*, and also upon August 11th, 12th, 19th, 26th and September 2d, 9th, 16th and 23d in each of the following papers, to wit:—

The *Press*, the *Times*, the *Record*, the *Ledger*, the *North American*, the *Telegraph*, the *Bulletin* and the *Inquirer*, each being a daily newspaper, printed, published, regularly issued and having a general circulation in the city of Philadelphia, in the State of Pennsylvania.

The *Times* and the *Sun*, each being a daily newspaper, printed, published, regularly issued and having a general circulation in the city of New York, in the State of New York.

The *Times* and the *News*, each being a daily newspaper, printed, published, regularly issued and having a general circulation in the city of London, in the Kingdom of Great Britain.

A printed copy of the said notice, as published in each and every of the said newspapers above mentioned, marked "Schedule A," is hereto affixed and made a part hereof.

Upon the eighteenth day of September, 1896, and within two weeks prior to the time of the said sale, we filed with the clerk of this court an amended and supplemental statement, showing as definitely as practicable all additions to and changes in the assets to be embraced in the sale, of which a statement already had been filed in the office of said clerk, as above stated; and reference to the said notice and supplemental notice as being part of this report is hereby made, with the same force and effect as though the same were herein set forth at length.

Second.—At the time and place specified in said notice of sale, to wit, upon Wednesday, the twenty-third day of September, 1896, at ten o'clock in the forenoon, immediately prior to the sale of the said mortgaged premises by said decree directed to be sold, we attended at the old station on Callowhill Street, between Thirteenth Street and Broad Street, in the city of Philadelphia, in the State of Pennsylvania, together with George L. Crawford, Esq., the Special Master in this cause, and then and there, pursuant to said decree and under the direction of the said Special Master, and, as next hereinafter set forth, we did sell for cash, at public auction, to the highest and best bidder or bidders therefor, in the several parcels deemed most expedient by us, acting under the direction of the said Special Master, and as designated in said statements and supplemental statements, such

method of sale being such as to us seemed most likely to secure the highest and best price for the property sold.

1. At the said time and place, pursuant to said decree, and under the direction of said Special Master, we first offered for sale, as a separate parcel, the right, title and interest of the Philadelphia and Reading Railroad Company in the following scurities, to wit, the same being designated in said statement as parcel 1:—

PARCEL 1.

The right, title and interest of The Philadelphia and Reading Railroad Company and of the Receivers thereof in the following securities, to wit:—

STOCKS.	SHARES.	PAR VALUE.
Allentown Railroad Company	21,479	$1,073,950
Atlantic City Railroad Company, preferred	19,0[illegible]	952,300
Atlantic City Railroad Company, common	23,972	1,198,600
Camden County Railroad Company	1,039	51,950
Catasauqua and Fogelsville Railroad Company	10,135	253,375
Catawissa Railroad Company, first preferred	228	11,400
Catawissa Railroad Company, second preferred	310	15,500
Central Dock and Terminal Railroad Company	1,816	181,600
Chester and Delaware River Railroad Company	750	37,500
Colebrookdale Railroad Company	5,601	280,050
Delaware River Ferry Company of New Jersey	4,992	499,200
East Mahanoy Railroad Company	5,646	282,300
East Pennsylvania Railroad Company	17,555	877,750
Gettysburg and Harrisburg Railway Company	10,807	540,350
Junction Railroad Company	1,718	85,900
Locust Gap Improvement Company	2,000	20,000
Middletown and Hummelstown Railroad Company	3,473	173,650
Mine Hill and Schuylkill Haven Railroad Company	1,620	81,000
Mill Creek and Mine Hill Navigation and Railroad Company	1,919	47,975
Mount Carbon and Port Carbon Railroad Company	768	38,400
Norristown Junction Railroad Company	400	20,000
Northeast Pennsylvania Railroad Company	6,252	312,600
North Pennsylvania Railroad Company	2,576	128,800
Philadelphia, Reading and Pottsville Telegraph Company	369	18,450
Philadelphia and Chester Valley Railroad Company, preferred	4,102	205,100
Philadelphia and Chester Valley Railroad Company, common	9,054	452,700
Philadelphia, Harrisburg and Pittsburgh Railroad Company	39,646	1,982,300
Pickering Valley Railroad Company	1,220	61,000
Reading and Columbia Railroad Company	15,726	786,300
Reading Iron Company	9,980	998,000
Rupert and Bloomsburg Railroad Company	960	48,000
Schuylkill and Lehigh Railroad Company	945	47,250

Stocks.	Shares.	Par Value.
Schuylkill Valley Navigation and Railroad Company	1,238	$61,900
Shamokin, Sunbury and Lewisburg Railroad Company	39,917	1,995,850
Bonds.		
Locust Dale Coal Company		156,000
People's Railway Company		36,000
Perkiomen Railroad Company		161,100
Philadelphia, Reading and Pottsville Telegraph Company		200,000
Philadelphia and Chester Valley Railroad Company, preferred		25,000
Philadelphia and Chester Valley Railroad Company, not preferred		47,000
Reading and Columbia Railroad Company firsts		9,500
Reading and Columbia Railroad Company seconds		35,000
Reading and Columbia Railroad Company debentures		1,000,000
Schuylkill and Lehigh Railroad Company firsts		93,900
Total		$15,584,500

The above shares and bonds being pledged as collateral security under the terms of an agreement dated January 2d, 1892, for the payment of an issue of $10,000,000 collateral trust bonds, of which there are now outstanding $350,000 of bonds held as security for an indebtedness of upwards of $500,000; $500,000 deposited with Pennsylvania Company for Insurances on Lives and Granting Annuities as indemnity against the pledge of $500,000 Catawissa Railroad Company bonds with the city of Philadelphia for the Pennsylvania Avenue subway; $405,000 pledged with the Pullman Palace Car Company as additional collateral for certain equipment notes, and $5,893,000 held as security for the payment of notes of the company amounting to $3,520,968.75; $400,000 pledged as indemnity to sureties and guarantors, and $2,452,000 in the possession of the Receivers.

Of these bonds $7,176,000 came into the possession of the Receivers in the course of the administration of their trust.

The sale will include the right, title and interest of the Receivers in and to all the $10,000,000 said collateral trust bonds, as well as in and to the shares and bonds pledged to secure the payment thereof.

An agreement has been made with certain of the holders of the bonds of the Philadelphia and Chester Valley Rail-

road Company whereby the interest upon the bonds of that company, preferred and not preferred respectively, is to be reduced to four per cent. and three per cent. per annum respectively.

The highest and best bid for said property, when so offered by us as the single parcel 1, was made by Charles H. Coster and Francis Lynde Stetson, who offered and bid for such property, as such separate parcel, the sum of $3,000,000, such bidders, as required by the said decree, having first deposited with us as Receivers, as a pledge that they would make good their bid or bids in case of acceptance, the sum of $100,000 in certified check upon a national bank in the city of New York.

2. There and thereupon we next offered for sale the following shares of stock and bonds, owned by The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, the same being designated in said statement as parcel 2:—

PARCEL 2.

The following shares of stocks and bonds owned by The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company:—

(Italics indicate owned by Coal and Iron Company; all others are owned by Railroad Company.)

STOCKS.	SHARES.	PAR VALUE.
Allentown Railroad Company	49	$2,450
Atlantic City Railroad Company, preferred	9	450
Atlantic City Railroad Company, common	28	1,400
Anthracite Water Company	950	95,000
Crystal Water Company	250	12,500
City Armory Association of Pottsville	75	750
Camden County Railroad Company	4	200
Catasauqua and Fogelsville Railroad Company	30	750
Central Dock and Terminal Railroad Company	38	3,800
Chester and Delaware River Railroad Company	50	2,500
Colebrookdale Railroad Company	29	1,450
Conshohocken Gas and Water Company	200	5,000
Conshohocken Gas and Water Company, preferred	20	500
Central Transfer Company Stock—Lyons	251	12,550
Danville and Shamokin Railroad Company	5,000	250,600
Delaware Coal Company	517	25,850
Delaware River Ferry Company of New Jersey	8	800
Douglassville and Yellow House Turnpike Company	50	5,000
East Mahanoy Railroad Company	27	1,350

Stocks.	Shares.	Par Value.
East Pennsylvania Railroad Company	22	$1,100
Good Springs Water Company	10	250
Germantown Transfer Company	40	200
Gettysburg and Harrisburg Railway Company	7	350
Lehigh Coal and Navigation Company	20	1,000
Harrisburg and Millerstown Railroad Company	417	10,425
Junction Railroad Company	5	250
Mammoth Vein Coal and Iron Company	700	7,000
Manufacturers' and Consumers' Railroad Company	10	50
Middletown and Hummelstown Railroad Company	27	1,350
Mill Creek and Mine Hill Navigation and Railroad Company	8	200
Mount Carbon and Port Carbon Railroad Company	8	400
Oliver Iron and Steel Company, preferred	312	15,600
Mansion House Hotel Company, Mauch Chunk	100	5,000
Manayunk and Roxboro Inclined Plane and Railway Company	100	2,500
Mentour Iron and Steel Company	2,640	132,000
National Company	1,000	50,000
Northeast Pennsylvania Railroad Company	128	6,400
Permanent Exhibition Company	....	114,000
Pottsville Mining and Manufacturing Company	400	20,000
Philadelphia and Frankford Railroad Company	10,000	500,000
Philadelphia and North Branch Railroad Company	20,000	20,000
Philadelphia and Reading Terminal Railroad Company	170,000	8,500,000
Philadelphia and Southern Mail Steamship Company	40	5,000
Proprietors of Susquehanna Canal	76	Est. 25,000
Parkiomen Railroad Company	3	150
People's Railway Company of Pottsville, Pa	2,703	54,060
Pennsylvania Steel Company	49	4,900
Philadelphia Bourse	30	1,250
Philadelphia and Erie Railroad Company	5	250
Philadelphia Floating Elevator Company	....	2,400
Philadelphia, Newtown and New York Railroad Company	500	25,000
Philadelphia, Newtown and New York, preferred	7,500	375,000
Philadelphia Belt Line, preferred	1,560	78,000
Philadelphia, Reading and New England Railroad Company	39,103	3,910,300
Philadelphia, Reading and New England, preferred	3	300
Philadelphia, Reading and Pottsville Telegraph Company	21	1,050
Philadelphia and Chester Valley Railroad Company, common	35	1,750
Philadelphia, Harrisburg and Pittsburgh Railroad Company	354	17,700
Pickering Valley Railroad Company	15	750
Port Reading Railroad Company	15,650	1,565,000
Port Reading Construction Company	40	2,000
Reading and Columbia Railroad Company	38	1,900
Reading Iron Company	20	2,000
Rupert and Bloomsburg Railroad Company	40	2,000
Schuylkill and Lehigh Railroad Company	55	2,750
Schuylkill Valley Navigation and Railroad Company	8	400
Schuylkill Navigation Company, preferred	3	150
Schuylkill River West Side Railroad Company	300	1,500
Schuylkill Electric Railway Company	804	40,200

Stocks.	Shares.	Par Value.
Shamokin, Sunbury and Lewisburg Railroad Company	83	$4,150
Silver Creek Water Company	1,000	50,000
Slatington Railroad Company	4,000	20,000
Stout's Ferry Bridge Company	70	1,750
Swedes Ford Bridge Company	360	9,000
Tamaqua, Hazleton and Northern Railroad Company	6,000	300,000
Wellman Iron and Steel Company, preferred	44	4,400
Wellman Iron and Steel Company, common	29	2,900
Wilmington and Reading Railroad Company	100	5,000
Windmill Island Ferry Company	390	39,000
Total stocks		$16,367,335

The above stocks being subject to the following-named pledges:—

One hundred and sixty-nine thousand nine hundred and fifty shares of the capital stock of the Philadelphia and Reading Terminal Railroad Company are pledged to secure the payment of the principal and interest of $8,500,000 bonds of The Philadelphia and Reading Railroad Company dated May 1st, 1891, known as the "Terminal" bonds.

Ten thousand shares of the capital stock of the Philadelphia and Frankford Railroad Company are pledged as collateral security for certain certificates of interest issued by the Guarantee Trust and Safe Deposit Company, under the agreement dated January 29th, 1894, between The Philadelphia and Reading Railroad Company *et al.* and George H. Earle, Jr., *et al.*, committee of bondholders, &c., of the Philadelphia and Frankford Railroad Company.

Bonds.	Par Value
Big Pond tract, Philadelphia and Reading Coal and Iron Company	$1,000
Bechtelsville Iron Company	58,000
Chandler tract, Philadelphia and Reading Coal and Iron Company	500
Coal Hill tract, Philadelphia and Reading Coal and Iron Company	44,000
Catharine Groh tract, Richardson, executor, Philadelphia and Reading Coal and Iron Company	18,000
Colebrookdale Railroad Company, first mortgage	100
Consolidated mortgage, first series, five per cent. fractional scrip	230
Camden County Railroad Company, five per cent. gold mortgage bonds	1,000

Bonds.	Par Value.
Catawissa Railroad Company, improvement mortgage bonds	$500,000
Conshohocken Tube Company	600
Davis, John R., bond and mortgage	3,079
Ely and Richle tract, Philadelphia and Reading Coal and Iron Company	111,000
Gettysburg and Harrisburg Railway Company, car trusts	18,000
Hamburg Iron Company	12,500
Iron Car Equipment Company, second mortgage bonds	7,522
Lessig tract, Philadelphia and Reading Coal and Iron Company	1,000
Mammoth Vein Coal and Iron Company	209,000
Mansion House Hotel Company, Mauch Chunk	7,000
Montour Iron and Steel Company	265,000
Monocacy Furnace Company	75,000
Mortgages and ground rents	336,005
Norristown Junction Railroad Company	1,500
Pickering Valley Railroad Company	2,000
Pennsylvania Steel Company, consolidated six per cents	19,988
Philadelphia, Harrisburg and Pittsburgh Railroad Company	1,500,000
Philadelphia, Newtown and New York Railroad Company	807,100
Preston Coal and Improvement Company	1,087,000
Reading Traction Company	1,000
Schuylkill and Lehigh Railroad Company	400,000
Schuylkill Navigation Company, boat and car loan, 1863–1913	200
Schuylkill Navigation Company, loan, 1844–1897	400
Schuylkill Navigation Company, convertible mortgage loan, 1852–1907	194
Summit Land tract, Philadelphia and Reading Coal and Iron Company	10,000
Sunbury and Northumberland Street Railway Company	15,000
Susquehanna Canal Company, seven per cent. bonds	1,000
Tamaqua, Hazleton and Northern Railroad Company, first mortgage	300,000
Tamaqua tract, Philadelphia and Reading Coal and Iron Company	165,000
Tremont Coal Company	900,000
Walker tract, Philadelphia and Reading Coal and Iron Company	2,000
Wood tract, Philadelphia and Reading Coal and Iron Company	5,000
Wetherill tract (Lee lands) Philadelphia and Reading Coal and Iron Company	4,000
Total bonds	$6,889,918
Total stocks and bonds	$23,257,253

The above bonds being subject to the following-named pledges:—

Five hundred thousand dollars Catawissa Railroad Company improvement mortgage bonds and $111,000 Ely and Richle tract bonds of The Philadelphia and Reading Coal and Iron Company are held by the city of Philadelphia on account of the construction of the subway, in

accordance with the authority of the order of court dated June 15th, 1894.

One hundred thousand dollars Philadelphia, Harrisburg and Pittsburgh Railroad Company bonds are held as security for the barge loan of The Philadelphia and Reading Railroad Company, in accordance with the authority of the order of the court dated March 2d, 1894.

One hundred thousand dollars Philadelphia, Harrisburg and Pittsburgh Railroad Company bonds are held as security for the cold storage loan of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, in accordance with the authority of the order of the court dated November 9th, 1894.

Four hundred thousand dollars Schuylkill and Lehigh Railroad Company bonds are held for exchange for second mortgage bonds of that company, which can only be sold for improvement of road.

One million and eighty-seven thousand dollars Preston Coal and Improvement Company mortgage bonds, nine hundred thousand Tremont Coal Company mortgage bonds, two hundred and nine thousand Mammoth Vein Coal and Iron Company mortgage bonds, are deposited as collateral to secure the payment of the principal and interest of $2,000,000 bonds of The Philadelphia and Reading Railroad Company, dated February 1st, 1892, known as the "Ten-year Sinking Fund Five per cent. Gold Loan."

Of the above bonds the following are outstanding as collateral for the floating debt mentioned in parcel 1 of $3,520,968.75:—

Philadelphia, Harrisburg and Pittsburgh Railroad Company bonds	$1,000,000
Philadelphia, Newtown and New York Railroad Company bonds	133,000
Tamaqua, Hazleton and Northern Railroad Company bonds	67,000
Montour Iron and Steel Company bonds	45,000
Philadelphia and Reading Coal and Iron Company, Tamaqua tract bonds	141,000
Philadelphia and Reading Coal and Iron Company, Coal Hill tract bonds	44,000
Total	$1,430,000

The highest and best bid for said property, when so offered by us as the single parcel 2, was made by Charles H. Coster and Francis Lynde Stetson, who offered and bid for such property as such separate parcel the sum of $1,000,000, such bidders, as required by the said decree, having first deposited with us as Receivers, as a pledge that they would make good their bid or bids in case of acceptance, the sum of $100,000 in certified check upon a national bank in the city of New York.

3. There and thereupon we next offered for sale all the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to two certain bonds of The Philadelphia and Reading Coal and Iron Company, and also certain claims or demands by The Philadelphia and Reading Railroad Company against The Philadelphia and Reading Coal and Iron Company, the same being designated in said statement as parcel 3, viz :—

PARCEL 3.

All the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to two certain bonds of The Philadelphia and Reading Coal and Iron Company.

One thereof, dated July 1st, 1874, for the principal sum of $30,000,000, and secured by mortgage dated July 1st, 1874, and the other thereof, dated December 28th, 1876, for the principal sum of $10,000,000, secured by mortgage dated December 28th, 1876.

The first of said mortgages was assigned to the trustee of the mortgage known as the General Mortgage of The Philadelphia and Reading Railroad Company bearing date July 1st, 1874, subject to a certain declaration in favor of the holders of the bonds secured by the mortgage known as the Consolidated Mortgage, as collateral to secure a proposed issue of $60,000,000 of bonds under said mortgage, of which $24,685,000 of bonds are now outstanding and held by the trustee of the General Mortgage of January 3d, 1888, and $1000 bond is now outstanding in the hands of the public. For further information

reference is hereby made to the said General Mortgage as the same remains of record.

The second of the said mortgages was assigned to the trustee of the mortgage known as the Income Mortgage of The Philadelphia and Reading Railroad Company, bearing date December 1st, 1876, as collateral to secure a proposed issue of $10,000,000 of bonds under said mortgage, of which $8,526,610 are now outstanding and held by the trustee of the General Mortgage of January 3d, 1888, and $2000 are now outstanding in the hands of the public.

By the twentieth article of the General Mortgage of January 3d, 1888, as by reference thereto will more fully appear, the said mortgages, subject to any assignment, pledge or transfer theretofore made, were made subordinate in lien, effect and operation to the said General Mortgage of January 3d, 1888, and the Railroad Company did thereby, to the full extent of its interest in said mortgages, make a certain declaration in reference thereto in favor of said General Mortgage of January 3d, 1888, as by reference thereto as the same remains of record will more fully appear.

Certain claims or demands of The Philadelphia and Reading Railroad Company against The Philadelphia and Reading Coal and Iron Company, as follows, to wit:—

A. Loan account, representing cash, advances, &c. $24,879,336 16
B. Current business account, approximating 4,300,000 00

The highest and best bid for said property, when so offered by us as the single parcel 3, was made by Charles H. Coster and Francis Lynde Stetson, who offered and bid for such property as such separate parcel the sum of $100,000, such bidders, as required by the said degree, having first deposited with us as Receivers, as a pledge that they would make good their bid or bids in case of acceptance, the sum of $100,000 in certified check upon a national bank in the city of New York.

4. There and thereupon, as authorized by said decree, and as by us, acting under the direction of the Special

Master, was deemed expedient and most likely to secure the highest and best price for the property sold, we did next offer for sale, as a unit and in a single parcel, all and singular the assets hereinbefore mentioned, being the combined parcels aforesaid, and the highest and best bid for all such assets and property, when offered as a single combined parcel, was made by Charles H. Coster and Francis Lynde Stetson, who as joint tenants, and not as tenants in common, offered and bid for such property as such single combined parcel the sum of $4,500,000, such bidders, as required by the said decree, having first deposited with us as Receivers, as a pledge that they would make good their bid or bids in case of acceptance, the sum of $100,000 in certified check on a national bank in the city of New York.

As the sum so bid by the said Coster and Stetson for the combined parcels when offered together as a single parcel and as a unit exceeded the aggregate amount of the highest and best bids for the property when offered as separate parcels, the undersigned then and thereupon did strike off and sell to the said Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, for their said aggregate bid of $4,500,000, all of the assets of every nature and description in our hands not in said decree adjudged to be subject to the lien of the General Mortgage above mentioned, and did return the deposits made by the said separate bidders for said parcels when offered separately.

Third.—Each and every of the said bids was made by the said purchasers and was accepted by us, and each and every such sale of the said property and assets was made by us and was accepted by the said purchasers, upon the express condition that every such sale was upon terms similar to those prescribed by the said decree in respect of the sale to be made by the said trustee under said General Mortgage of the premises and property by said decree adjudged to be subject to said General Mortgage—for full and detailed statement of which

reference was made to said decree and to said notice of sale.

We hold subject to the court's order $300,000 cash, to us paid over by said purchasers on their bid.

All of which is respectfully submitted.

J. S. HARRIS,
EDWARD M. PAXSON,
JNO. LOWBER WELSH,
Receivers.

Dated PHILADELPHIA, September 23d, 1896.

SCHEDULE A.

(Being copy notice referred to in foregoing report.)

THE PHILADELPHIA AND READING COMPANIES.

NOTICE OF RECEIVERS' SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant, vs. *The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.*	In Equity. April Sessions, 1895. No. 9.

WHEREAS, By a decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, made and entered on the first day of May, 1896, in the above-entitled cause, it was among other things provided that in default of the payment therein adjudged to be made, the above-named complainant, The Pennsylvania Company for Insurances on Lives and Granting Annuities, the trustee named in a mortgage or deed of trust made by The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, dated January 3d, 1888, known as the General Mortgage, should sell all the property, premises and franchises of every description described in said General Mortgage or adjudged in said decree to have become subject

thereto, except the property sold since the date of said General Mortgage under the powers therein reserved;

And Whereas, Default has been made in such payment, and said trustee has given notice that it will, in pursuance of said decree and in the exercise of the powers and duties conferred and imposed by said General Mortgage, sell said mortgaged property at the old station on Callowhill Street, between Thirteenth Street and Broad Street, in the city of Philadelphia, in the State of Pennsylvania (that being upon the premises sold), upon Wednesday, the twenty-third day of September, 1896, at twelve o'clock noon of that day, upon the terms stated in said decree and in said notice of sale;

And Whereas, By said decree it was further ordered, adjudged, and decreed that the Receivers of the property of the above-named defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, sell on the day and at the place appointed by said trustee for the sale of said mortgaged premises, and immediately prior to such sale, all the assets of every nature or description in the hands of said Receivers and not adjudged by said decree to be subject to the lien of said General Mortgage;

Now, therefore, the undersigned, the Receivers of all the property of the above-named defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, will, under the direction of the Special Master in said case, sell at public auction to the highest bidder or bidders, for cash, at the old station on Callowhill Street, between Thirteenth Street and Broad Street, in the city of Philadelphia, in the State of Pennsylvania, on the said Wednesday, the twenty-third day of September, 1896, at ten o'clock in the forenoon, immediately prior to the sale of the said mortgaged premises by said decree directed to be made, all said assets of every nature and description in the hands

of said Receivers not by said decree adjudged to be subject to the lien of said General Mortgage, including the shares and bonds owned by The Philadelphia and Reading Railroad and Philadelphia and Reading Coal and Iron Companies, now in the hands of the Receivers (or the right, title and interest in and to such as are subject to the pledges specified in the statement now on file with the clerk of the said court), and the right, title and interest of The Philadelphia and Reading Railroad Company in the collaterals pledged under the agreement of January 1st, 1892, to secure an issue of $10,000,000 collateral trust bonds, of which bonds $7,148,000 are pledged and held as security for certain obligations particularly described in the said statement.

No bid will be received from any one offering to bid who shall not first deposit, as pledge that he will make good his bid or bids in the event of acceptance, the sum of $100,000 in money, or in certified check or checks on a national bank or banks, or trust company or trust companies, in the city of Philadelphia or the city of New York; and on payment of the purchase price the Receivers will deliver to the purchaser or purchasers the assets so sold, free from further claim or liability of any character in respect of such purchase. In all other respects said sale will be upon terms similar to those prescribed by said decree in respect of the sale to be made by said trustee under said General Mortgage of the premises and property by said decree adjudged to be subject to said General Mortgage; for a full and detailed statement of which reference is hereby made to said decree and to said notice of sale.

In accordance with the terms of the decree requiring the Receivers within two weeks prior to the time of the foregoing sale to file with the clerk of the said court a statement showing, as definitely as practicable, the assets to be embraced in the sale, of which notice is hereinabove given, such statement has been filed in the office of the said clerk, and for further particulars reference thereunto is hereby made; but such statement will be ad-

visory only, and nothing therein contained will be binding upon the purchaser or purchasers at said sale, nor will such statement constitute grounds for a release from any bid because of any misrepresentation therein or omission therefrom.

The Receivers deem it expedient, and accordingly they give notice, that the before-mentioned assets in said statement specified and divided into separate parcels shall and will be offered as follows, to wit:—

The right, title and interest of the Receivers and of the Railroad Company in and to the stocks and bonds, of the par value in the aggregate of $15,584,500, pledged to secure the collateral trust loan, and constituting parcel 1, as set forth in the said statement, will first be offered for sale as a separate parcel, and the Receivers will note the highest and best bid received therefor.

They will next offer for sale, as a separate parcel, the stocks and bonds, of the par value in the aggregate of $23,239,253 (or the right, title and interest in such as are pledged), in said statement, designated as parcel 2, and will note the highest and best bid received therefor.

They will next offer for sale as a separate parcel the right, title and interest of the Railroad Company in and to two certain bonds of the Coal and Iron Company, and also in certain claims against the Coal and Iron Company in said statement designated as parcel 3 (said bonds and claims amounting in the aggregate to $68,879,336.16), and will note the highest and best bid received therefor.

They will also, if requested so to do by any bidder, receive bids for any separate item or items in parcel 2, and then offer the remaining items in said parcel, and note the highest and best bids received therefor.

They will then offer for sale, as a unit, all and singular the assets hereinbefore mentioned, being the combined parcels aforesaid, and will note the highest and best bid received therefor.

If the best bid for all such assets and property when offered as one parcel shall exceed the aggregate of the

bids theretofore received therefor when offered as separate parcels, then and in such case the Receivers will strike off all of the said assets and property to the highest and best bidder for the same as so sold as one parcel; but if such unit bid for all such assets and property as one parcel shall be less than the aggregate of such separate bids theretofore received therefor when offered as separate parcels, then and in such case the Receivers will strike off the said parcels separately to the highest and best bidders respectively for such parcels severally.

Dated PHILADELPHIA, August 1st, 1896.

JOSEPH S. HARRIS,
EDWARD M. PAXSON,
J. LOWBER WELSH,

Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company.

THOMAS HART, JR.,
SAMUEL DICKSON,

Solicitors.

TRUSTEE'S REPORT OF SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,	
vs.	In Equity.
The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.	April Sessions, 1895. No. 9.

TO THE HONORABLE THE JUDGES OF SAID COURT IN EQUITY SITTING:

On the first day of May, 1896, a decree of foreclosure and sale was entered in the above-entitled cause, wherein and whereby, among other things, it was ordered, adjudged and decreed that in default of the payment by the defendant, The Philadelphia and Reading Railroad Company, or by any one claiming under it, or by any one for its account, or of payment by the defendant, The Philadelphia and Reading Coal and Iron Company, or by any one claiming under it, or by any one for its account, of the amount by said decree adjudged, within twenty days after the entry of said decree, the properties, premises and franchises by said decree adjudged to have become subject to a mortgage or deed of trust bearing date the third day of January, 1888, made to the complainant in said cause by the said The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, and known as the General Mortgage, be sold as in said decree directed on

a day and at an hour to be fixed by said complainant, the trustee under said General Mortgage; and more than twenty days having elapsed since the entry of said decree and default having been made in the payment by said decree directed:

Now, the undersigned, The Pennsylvania Company for Insurances on Lives and Granting Annuities, the trustee named in said General Mortgage of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, dated January 3d, 1888, under and in pursuance of said decree does hereby report as follows:—

First.—The undersigned, as trustee named in said General Mortgage, did give notice that under and in pursuance of said decree and in the exercise of the powers and duties conferred and imposed upon it by said General Mortgage, would sell at the old station on Callowhill Street, between Thirteenth Street and Broad Street, in the city of Philadelphia, in the State of Pennsylvania (that being on the premises to be sold), on Wednesday, the twenty-third day of September, 1896, at twelve o'clock noon of that day, to the highest and best bidder or bidders, all and singular the mortgaged and pledged property by said decree adjudged to be subject to said General Mortgage and therein directed to be sold; such notice of sale containing a brief general description of the property to be sold, and referring to the said decree, which notice was given by publication for a period of three months, as in said decree directed, and was published upon June 22d, 24th, July 1st, 8th, 15th, 22d, 29th, August 5th, 12th, 19th, 26th and September 2d, 9th, 16th and 23d in each of the following newspapers, to wit:—

The *Press*, the *Times*, the *Record*, the *Ledger*, the *North American*, the *Telegraph*, the *Bulletin*, and the *Inquirer*, each being a daily newspaper printed, published, regularly issued and having a general circulation in the city of Philadelphia, in the State of Pennsylvania.

The *Times* and the *Sun*, each being a daily newspaper printed, published, regularly issued and having a general

circulation in the city of New York, in the State of New York.

The *Times* and the *News*, each being a daily newspaper printed, published, regularly issued and having a general circulation in the city of London, in the Kingdom of Great Britain.

A printed copy of the said notice, as published in each and every of the said newspapers above mentioned, marked "Schedule A," is hereunto annexed and made part hereof.

Second.—At the time and place specified in such notice of sale, to wit, upon Wednesday, the twenty-third day of September, 1896, at twelve o'clock noon of that day, the undersigned, as such trustee, by its president, Henry N. Paul, and J. Harbeson Barnes as its auctioneer, attended at the old station on Callowhill Street, between Thirteenth Street and Broad Street, in the city of Philadelphia, in the State of Pennsylvania (that being on the premises sold), and then and there, pursuant to said decree and as next hereinafter set forth, did sell the entire mortgaged and pledged property of every description of said The Philadelphia and Reading Railroad Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire mortgaged and pledged property of every description of said The Philadelphia and Reading Coal and Iron Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire property pledged to the complainant by the Reconstruction Trustees, as set forth in the bill of complaint in this cause, severally and respectively in each case as a whole and as directed in the said decree.

(1.) The undersigned then and there first offered for sale, as a separate parcel, the following property of The Philadelphia and Reading Railroad Company, the same being designated in said notice of sale as the first parcel, viz.:—

THE FIRST PARCEL.

THE FOLLOWING PROPERTY OF THE PHILADELPHIA AND READING RAILROAD COMPANY.

I.

The following lines of railroads and other property of said Railroad Company, to wit:—

The Main Line, the Lebanon Valley Branch, the Lebanon and Tremont Branch, the Mahanoy and Shamokin Branch, the Mt. Carbon Branch, the Schuylkill and Susquehanna Branch, the Port Kennedy Branch, the West Reading Branch, the Moselem Branch;

The leasehold interest in the Philadelphia, Germantown and Norristown Railroad;

The leasehold interest in the Chestnut Hill Railroad;

The leasehold interest in the Plymouth Railroad;

The leasehold interest in the Colebrookdale Railroad;

The leasehold interest in the East Pennsylvania Railroad;

The leasehold interest in the East Mahanoy Railroad Company and the Little Schuylkill Navigation Railroad and Coal Company;

The leasehold interest in the Schuylkill Valley Navigation and Railroad Company;

The leasehold interest in the Mill Creek and Mine Hill Navigation and Railroad Company;

The leasehold interest in the Mt. Carbon and Port Carbon Railroad;

The leasehold interest in the Mine Hill and Schuylkill Haven Railroad;

The leasehold interest in the canal and navigation work of the president, managers and company of the Schuylkill Navigation Company;

The leasehold interest in the canal and navigation works of the Susquehanna Canal Company;

The leasehold interest in the railroad of the Catawissa Railroad Company;

1145

The leasehold interest in the railroad of the Pickering Valley Railroad Company;

The leasehold interest in the railroad known as the Philadelphia and Chester Branch;

The leasehold interest in the main line of the railroad of the North Pennsylvania Railroad Company and the branches thereof known as the Delaware River Branch and the Doylestown Branch;

The leasehold interest in the railroad of the Delaware and Bound Brook Railroad Company, together with the branch known as the Trenton Branch;

The leasehold interest in the Schuylkill and Lehigh Railroad;

The leasehold interest in the Shamokin, Sunbury and Lewisburg Railroad;

And all real estate of said Railroad Company wherever situated owned by it at the date of the execution of said General Mortgage or by it thereafter in any manner acquired, or held for its benefit or in trust for it; all other railroads then owned or thereafter constructed or acquired by purchase, merger, or in any manner whatever by said Railroad Company; all other leasehold estates in any other railroads at any time after the execution of said General Mortgage acquired by lease, assignment or in any manner whatsoever by said Railroad Company; all branches, extensions, sidings and turnouts of all said railroads and each of them; all advances made by said Railroad Company in the operation by it of the leased railroads forming part of the mortgaged property so far as the same are repayable, and all right and claim to the repayment thereof; all lands, rights of way, rails, bridges, walls, fences, workshops, machinery, stations, offices, depots, depot grounds, engine houses, buildings, improvements, tenements and hereditaments; all locomotives, tenders, passenger cars, baggage cars, freight cars, coal cars and all other engines, cars, carriages and rolling stock, tools, implements, materials and supplies; and all steam colliers, ships, vessels and canal boats owned by said Railroad Company at the date of the

execution of said General Mortgage, or by it thereafter at any time acquired; all and singular the tolls, rents, revenues, issues, profits and income of the Railroad Company derived from said railroads, canals and other property; all corporate and other rights, privileges, appurtenances and franchises of said Railroad Company, or connected with or relating to said mortgaged premises then owned by it or thereafter acquired; all the streets, ways, alleys, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of said mortgaged premises and estates belonging or appertaining; and all the estate, right, title, interest, profit, claim and demand of every nature and kind whatsoever of the Railroad Company, as well at law as in equity, of, in and to the same and every part and parcel thereof.

Excepting, however, therefrom any property heretofore sold or conveyed by said Railroad Company under the powers reserved in said General Mortgage, but including all cash and securities by the trustee received and held in consideration of its release of any such property.

II.

One hundred and sixty thousand shares of the par value of fifty dollars each in the capital stock of The Philadelphia and Reading Coal and Iron Company.

III.

All shares and bonds of lines leased or controlled by The Philadelphia and Reading Railroad Company deposited with the undersigned as trustee under the said General Mortgage of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, dated January 3d, 1888, for which General Mortgage bonds have, under the terms of said General Mortgage, been issued, including the following:—

(1.) $192,340.47 of the mortgage loans of the Schuylkill Navigation Company, commonly known as loans of 1872–1897.

(2.) $91,317.67 of the mortgage loans of the Schuylkill Navigation Company, commonly known as Loans of 1882–1907.

(3.) $119,000 of the loans of the Schuylkill Navigation Company, commonly known as the Loans of 1895.

(4.) $13,500 of the loans of the Schuylkill Navigation Company, commonly known as the Improvement Loan.

(5.) $71,500 of the boat and car loans of the Schuylkill Navigation Company.

(6.) $64,300 in the preferred stock of the Schuylkill Navigation Company.

(7.) $20,800 in the common stock of the Schuylkill Navigation Company.

(8.) The following securities and stocks of the Susquehanna Canal Company:—

First mortgage preferred	$227,000 00
First mortgage priority	96,810 58
Third mortgage six per cent	1,316,376 52
Fourth mortgage seven per cent	238,000 00
Stock	1,970,973 84

(9.) $239,300 in the first mortgage loan of the Pickering Valley Railroad Company.

(10.) $504,300 in the mortgage bonds of the Colebrookdale Railroad Company.

(11.) The following securities of the Catawissa Railroad Company:—

10 per cent. chattel mortgage bonds, 1868–1888	$98,450
5 per cent. chattel mortgage bonds, 1880	24,500
7 per cent. debenture bonds, 1917	62,000

Subject, however, and reference is hereby made, to the terms, conditions, reservations and obligations in the said decree contained, including those therein described applicable to the said first parcel, and especially to the provisions in said decree that all claims and equities of the Philadelphia, Reading and New England Railroad Company and the holders of its bonds and shares be, and the same were thereby, reserved for further consideration.

The undersigned also then and there gave public notice that the parcel so offered for sale was and is sub-

ject to the following prior liens and incumbrances, so far as they respectively attach to the premises thereby conveyed or any part thereof, viz:)—

Certain mortgages created by The Philadelphia and Reading Railroad Company to secure bonds, of which there were outstanding at the execution of the said General Mortgage the following amounts, to wit:—

6 per cent. £ mortgage loan, 1843–1910, coupon	$967,200 00
6 per cent. $ mortgage loan, 1843–1910, coupon	545,500 00
6 per cent. $ mortgage loan, 1844–1910, coupon	795,000 00
6 per cent. $ mortgage loan, 1848–1910, coupon	92,000 00
6 per cent. $ mortgage loan, 1849–1910, coupon	67,000 00
4½ per cent. $ mortgage, convertible loan, 1857–86, coupon	1,000 00
4½ per cent. $ mortgage, convertible loan, 1857–1910, coupon	78,000 00
5 per cent. $ mortgage, convertible loan, 1868–1893–1933	2,696,000 00
	$5,241,700 00

Consolidated mortgage loan, 1871–1911:

6 per cent. gold, $ or £, coupon	$6,999,000 00
6 per cent. gold, $ or £, coupon	305,000 00
6 per cent. gold, $, registered	858,000 00
7 per cent. gold, $, registered	3,339,000 00
7 per cent. gold, $, coupon	7,310,000 00
	$18,811,000 00

Improvement mortgage loan, 1873–97:

6 per cent. gold, $ or £, coupon	$49,364,000 00

Income mortgage loan, 1876–96:

7 per cent., $	1,000 00

Consolidated mortgage loan, 1882–1922, first series:

5 per cent. gold, $	5,767,042 00

Consolidated mortgage loan, 1883–1933, second series:

5 per cent. gold, $	1,535 00
Bonds and mortgages on real estate	3,598,896 85
	$42,785,173 85

Thereupon Charles H. Coster and Francis Lynde Stetson offered and did bid for the property above described, being the first parcel aforesaid, the sum of $7,500,000, and with such offer and bid deposited $400,000 par value of the bonds secured by the said General Mortgage, with all unpaid coupons attached. No higher offer or bid for such property was made, although ample opportunity was given therefor.

Thereupon the undersigned struck off said property, being the first parcel aforesaid, to the said Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, for the sum of $7,500,000, they being the highest and best bidders, and that being the highest and best bid therefor.

Thereupon the said Charles H. Coster and Francis Lynde Stetson, upon the acceptance of their said bid for the first parcel aforesaid, made a further deposit of $600,000, par value, of the bonds secured by the said General Mortgage, with all unpaid coupons thereto attached.

(2.) There, and thereupon, the undersigned next offered for sale the following property of The Philadelphia and Reading Coal and Iron Company, the same being designated in said notice of sale as the second parcel, viz.:—

THE SECOND PARCEL.

THE FOLLOWING PROPERTY OF THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

I.

The following coal lands, coal leases, iron-ore lands, furnace properties and other real estate:—

COAL LANDS.

No. 1. Trevorton estate.
2. Associate lands.
3. Zimmerman and Heller tracts.
4. John Boyd tract.
5. Shamokin and Bear Valley tracts.
6. M. E. Leverson tract.
7. William M. Rockafeller tract.
8. Big Mountain lands.

9. Wetherill, Gray, Cleaver, and Brady tracts.
10. Preston Miller survey.
11. Bittenbender lands.
12. George Schall tract.
13. McIntyre lands.
14. William Sheed tract.
15. Helfenstein lands.
16. Locust Mountain Summit Improvement Company lands.
17. Samuel Morgan tract.
18. Mount Carmel Coal and Iron Company lands.
19. Mount Carmel and Locust Mountain Coal Company lands.
20. Locust Dale estate.
21. Ashland estate.
22. Fountain Springs tract.
23. Necho Allen tract.
24. Locust Mountain tract.
25. William Jones tract.
26. Philadelphia and Mahanoy lands.
27. James McNeal tract.
28. Taggart tract.
29. Neifert tract.
30. Sheafer tract.
31. Kear and Patterson lands.
32. Ely and Richle tract.
33. Andrew Love tract.
34. Summit lands.
35. Tamaqua lands.
36. Coal Hill estate.
37. Wood and Abbot tract.
38. Guiterman or Tuscarora tract.
39. Glentworth tract.
40. Eagle Hill tract.
41. Mary Patterson tract.
42. Valley Furnace lands.
43. Lewis tracts.
44. Ravensdale tract.
45. Dilcamp tract.
46. Lee lands.
47. Repp and Keim tracts.
48. Repp's heirs' tract.
49. Saw Mill tract.
50. St. Clair tract.
51. Ellmaker tract.
52. Flowery Field tract.
53. West Flowery Field tract.
54. Mount Laffee tract.
55. Oak Hill tract.
56. Duncan lands.
57. Houston or Russell tract.
58. Coit tract.
59. Samuel Heffner tract.
60. Minersville tract.
61. Minersville Coal Reserve.
62. Carey and Hart tract.
63. Jemmy Laing tract.
64. Diamond tract.
65. Gettle and Wagner lands.
66. Manhattan lands.
67. Catharine Groh tract.

68. Hammer and Hoy tract.
69. Phœnix Park tract.
70. Hughes and Langton tract.
71. Llewellyn tract.
72. Salem lands.
73. Little Klauser tract.
74. Reed tract.
75. Hartman and Myer tract.
76. Little Schall tract.
77. Big Schall tract.
78. Gunkel and Branham tracts.
79. Farquhar lands.
80. Green lands.
81. Swatara lands.
82. Schuylkill and Dauphin Improvement and Railroad Company lands.
83. Tower Meconkey *et al.* lands.
84. Francis Spatzer tract.
85. One-eighth of Joseph S. Silver tract.
86. Henry Houtz tract.
87. Alexander Klinger tract.
88. Philip Kunzleman tract.
89. Forbes and Delano lands.
90. Leonard Illig tract.
91. Peter Levengood tract.
92. Munson and Williams lands.
93. Keffer tract.
94. Fishing Creek tract (north).
95. Fishing Creek tract (south).
96. Michael Seltzer tract.
97. Schuylkill and Susquehanna lands.
98. Peter Kessler tract.

Coal Leases.

99. Lease from the Preston Coal and Improvement Company.
100. Lease from the Delaware Coal Company.
101. Lease from the Mammoth Vein Coal and Iron Company.
102. Lease from the Tremont Coal Company.
103. Lease of Green tract.
104. Lease of Henry Miller and Sarah Moore tracts.
105. Lease of Conrad Mertz tract.
106. Lease of Hepburn tract.
107. Lease of one-fourth of Bernard Hubley tract.
108. Lease of part of Andrew Lytle tract.
109. Lease of one-eighth of the Alexander Klinger tract.
110. Lease of one-half of Kinnear, Meyer, and Spaetzer tracts.
111. Lease of Nancy Kinnear tract.
112. Lease of Flowery Field, Saw Mill and Ellmaker tracts and Lee lands.
113. Lease of West Bear Ridge Colliery.
114. Lease of East Bear Ridge Colliery.
115. Lease of Henry Clay Colliery.
116. Lease of Peerless Colliery.
117. Lease of Buck Ridge Colliery.
118. Lease of Girard, Mammoth and Cuyler Collieries.
119. Lease of Union, or North Ashland, Colliery.
120. Lease of Hammond and Conner Collieries.
121. Lease of Girard Colliery.

Iron-Ore Lands.

122. Putnam Valley, New York, lands.
123. Putnam County, New York, ore lands.
124. Nelson County, Virginia, iron-ore lands.
125. Nelson and Amherst Counties, Virginia, iron-ore lands.
126. Albemarle County, Virginia, iron-ore lands.
127. Seasholtzville, Pa., land.
128. Big Pond, Pa., estate.
129. Boiling Spring lease, Pennsylvania.
130. Heim and Vanasdlen lands.

Furnace Properties.

131. Bechtelsville.
132. Swede.
133. Kutztown.
134. East Penn.
135. Emaus.
136. St. Clair.
137. Ringgold.
138. Monocacy.
139. Port Carbon Furnace and Rolling Mill.
140. Powhatan Furnace, Virginia.

Other Real Estate.

141. Office building and lot, Pottsville.
142. Acre lot, Branch Township.
143. Tower City lands.
144. Lot of ground, Chestnut Street, Reading.
146. Adams Street Depot, Brooklyn, N. Y.
147. Twenty-ninth Street Depot (leasehold), New York City.
148. New Bedford Depot, Massachusetts.
149. Newburyport Depot, Massachusetts.
150. Salem Depot (leasehold), Massachusetts.
151. Pottsville shops.
152. Bellefonte lots.
153. Surface—Town of Locust Dale.
154. Surface—Ashland.
155. Hegins Township lot.
156. Port Carbon lots.
157. Berks County lands.
158. Lot at Preston.
159. Various Schuylkill County lands.
160. Cameron Township lands.

And all other real estate of said Coal and Iron Company wherever situate owned by it at the date of the execution of said General Mortgage, or by it thereafter in any manner acquired or held for its benefit or in trust for it; all railroads and all branches, extensions, sidings and turnouts of any railroad then belonging to said Coal and Iron Company, or thereafter constructed or in any

manner acquired by it; all lands, coal leases, iron-ore leases, mines, collieries, breakers, engines, workshops, machinery, offices, buildings, improvements, tenements and hereditaments then owned by it or by it thereafter in any manner acquired or for its benefit or in trust for it; all yards, depots and wharves, all locomotives, tenders, coal cars, carriages and all other engines, cars, rolling stock, tools, implements, horses, mules and materials; and all corporate and other rights, privileges, appurtenances and franchises of said Coal and Iron Company, or connected with or relating to the said lands, coal or iron mines, railroad or other premises, or any of them, owned by said Coal and Iron Company at the date of the execution of said General Mortgage, or by it at any time thereafter constructed or acquired; all and singular the tolls, rents, revenues, issues, profits and income of the Coal and Iron Company derived from said railroad, canals, coal or iron mines, and other property; and all streets, ways, alleys, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatever unto any of the said mortgaged premises and estates belonging or appertaining; and all the estate, right, title, interest, profit, claim and demand of every nature and kind whatsoever of the Coal and Iron Company, as well at law as in equity, of, in and to the same and every part and parcel thereof.

Excepting, however, therefrom any property heretofore conveyed or transferred under the powers reserved in said General Mortgage, but including all cash and securities by the trustee received and held in consideration of its release of any such property.

II.

The following shares of the capital stock of other corporations owned by said Coal and Iron Company, but subject to a prior pledge thereof by it to The Philadelphia and Reading Railroad Company under a mortgage dated July 1st, 1874, viz.:—

Name of Company.	No. of Shares.
Preston Coal and Improvement Company	56,683
Fulton Coal Company	63,537
Locust Gap Improvement Company	50,522
Tremont Coal Company	118,354
Mammoth Vein Coal and Iron Company	59,727
Delaware Coal Company	4,716

Subject, however, and reference is hereby made, to the terms, conditions, reservations and obligations in the said decree contained, including those therein described applicable to the said second parcel.

The undersigned also then and there gave public notice that the parcel so offered for sale was and is subject, so far as applicable to the same or to parts thereof, to certain mortgages or liens given or created by The Philadelphia and Reading Coal and Iron Company to secure obligations to an aggregate principal amount of $12,500,000, as shown by the report of the Special Master filed herein.

Thereupon Charles H. Coster and Francis Lynde Stetson offered and did bid for the property above described, being the second parcel aforesaid, the sum of $7,500,000, and with such offer and bid deposited $400,000, par value, of the bonds secured by the said General Mortgage, with all unpaid coupons attached. No higher offer or bid for such property was made, although ample opportunity was given therefor.

Thereupon the undersigned struck off said property, being the second parcel aforesaid, to the said Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, for the sum of $7,500,000, they being the highest and best bidders, and that being the highest and best bid therefor.

Thereupon the said Charles H. Coster and Francis Lynde Stetson, upon the acceptance of their said bid for the second parcel aforesaid, made a further deposit of $600,000, par value, of the bonds secured by the said General Mortgage, with all unpaid coupons thereto attached.

(3.) There and thereupon the undersigned next offered for sale the following securities and stocks pledged as security for said General Mortgage by certain Reconstruction Trustees of The Philadelphia and Reading Railroad Company, the same being designated in said notice of sale as the third parcel, viz.:—

THE THIRD PARCEL.

THE FOLLOWING SECURITIES AND STOCKS PLEDGED AS SECURITY FOR SAID GENERAL MORTGAGE BY CERTAIN RECONSTRUCTION TRUSTEES OF THE PHILADELPHIA AND READING RAILROAD COMPANY:

I.

General mortgage bonds of The Philadelphia and Reading Railroad Company, secured by a mortgage of said Railroad Company, dated July 1st, 1874, to the Fidelity Insurance, Trust and Safe Deposit Company, trustee, $24,457,000.

Income mortgage bonds of The Philadelphia and Reading Railroad Company, secured by a mortgage of said Railroad Company, dated December 1st, 1876, to Edwin M. Lewis, trustee, $8,493,810.

First series five per cent. consolidated mortgage bonds of The Philadelphia and Reading Railroad Company, secured by mortgage of said Railroad Company, dated August 26th, 1882, to The Pennsylvania Company for Insurances on Lives and Granting Annuities, of the City of Philadelphia, trustee, $184,606.

Second series five per cent. consolidated mortgage bonds of The Philadelphia and Reading Railroad Company, secured by said mortgage, dated August 26th, 1882, $6,131,404.

II.

(1.) $1,493,249.73 of the mortgage loans of the Schuylkill Navigation Company, commonly known as the Loans of 1872–1897.

(2.) $3,849,828.67 of the mortgage loans of the Schuylkill Navigation Company, commonly known as the Loans of 1882–1907.

(3.) $1,062,000 of the loan of the Schuylkill Navigation Company, commonly known as the Loan of 1895.

(4.) $214,500 of the loan of the Schuylkill Navigation Company, commonly known as the Improvement Loan.

(5.) $669,550 of the boat and car loan of the Schuylkill Navigation Company, due in 1913.

(6.) $579,350 of the boat and car loan of the Schuylkill Navigation Company, due in 1915.

(7.) 64,580 shares of the preferred stock of the Schuylkill Navigation Company.

(8.) 12,554 shares of the common stock of the Schuylkill Navigation Company.

Subject, however, and reference is hereby made, to the terms, conditions, reservations and obligations in the said decree contained, including those therein described applicable to the said third parcel.

Thereupon, Charles H. Coster and Francis Lynde Stetson offered and did bid for the property above described, being the third parcel aforesaid, the sum of $1,000,000, and with such offer and bid deposited $400,000, par value, of the bonds secured by the said General Mortgage, with all unpaid coupons attached. No higher offer or bid for such property was made, although ample opportunity was given therefor.

Thereupon the undersigned struck off said property, being the third parcel aforesaid, to the said Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, for the sum of $1,000,000, they being the highest and best bidders, and that being the highest and best bid therefor.

Thereupon the said Charles H. Coster and Francis Lynde Stetson, upon the acceptance of their said bid for the third parcel aforesaid, made a further deposit of $600,000, par value, of the bonds secured by the said General Mortgage, with all unpaid coupons thereto attached.

(4.) Subject to the terms, conditions and obligations in said decree contained, the following-described property was included in such sales and struck off to the said purchasers, viz.:—

All property, real and personal, of every character and description, or any beneficial interest therein, acquired by the Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company in the course of the operation and management of either of said two parcels or pertaining thereto, or to which, or to any beneficial interest in which, they are or may become entitled, including all income, proceeds of income, bills and accounts receivable, cash, materials, supplies and other property received by said Receivers in the management or operation of such parcel or pertaining thereto, and any and all property appurtenant to such parcel or pertaining thereto and acquired for use in connection with or for the purposes of such parcel or the business of said Railroad Company, or of said Coal and Iron Company in connection therewith, and vested in or standing in the name of the said Receivers, or to which said Receivers in any manner shall have acquired title, at the time of delivery to the purchaser of such parcel; all equipment and all coal in possession of said Receivers at the time of the delivery of such parcel to be delivered as part of and in connection with the parcel in respect of which it shall have been acquired or received by said Receivers.

All of which is respectfully submitted.

PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES, TRUSTEE,

By

H. N. PAUL,

President.

Dated PHILADELPHIA, September 23d, 1896.

SCHEDULE A, REFERRED TO IN FOREGOING REPORT.

THE PHILADELPHIA AND READING COMPANIES.

NOTICE OF FORECLOSURE SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,	
vs.	In Equity.
The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.	April Sessions, 1895. No. 9.

WHEREAS, By a decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, made and entered on the first day of May, 1896, in the above-entitled cause, it was, among other things, provided that in default of the payment by the defendant The Philadelphia and Reading Railroad Company, or by any one claiming under it, or by any one for its account, or of payment by the defendant The Philadelphia and Reading Coal and Iron Company, or by any one claiming under it, or by any one for its account, of the amount by said decree adjudged, within twenty days after the entry of said decree, the properties, premises and franchises by said decree adjudged to have become subject to a mortgage or deed of trust, bearing date the third day of January, 1888, made to the complainant

in said cause by the said The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, and known as the General Mortgage, be sold as in said decree directed, on a day and at an hour to be fixed by said complainant, the trustee under said General Mortgage;

And Whereas, More than twenty days have elapsed since the entry of said decree and default has been made, in the payment by said decree directed;

Now, therefore, The Pennsylvania Company for Insurances on Lives and Granting Annuities, the trustee named in said General Mortgage of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, dated January 3d, 1888, under and in pursuance of said decree and in the exercise of the powers and duties conferred and imposed upon it by said General Mortgage, will sell at the old station on Callowhill Street between Thirteenth Street and Broad Street, in the city of Philadelphia, in the State of Pennsylvania (that being on the premises to be sold), on Wednesday, the twenty-third day of September, 1896, at twelve o'clock noon of that day, to the highest and best bidder or bidders,

All and singular the mortgaged and pledged property by said decree adjudged to be subject to said General Mortgage, and therein directed to be sold, and briefly described as follows:—

AS THE FIRST PARCEL.

The Following Property of the Philadelphia and Reading Railroad Company:—

I.

The following lines of railroads and other property of said Railroad Company, to wit:—

The Main Line, the Lebanon Valley Branch, the Lebanon and Tremont Branch, the Mahanoy and Shamo-

kin Branch, the Mt. Carbon Branch, the Schuylkill and Susquehanna Branch, the Port Kennedy Branch, the West Reading Branch, the Moselem Branch;

The leasehold interest in the Philadelphia, Germantown and Norristown Railroad;

The leasehold interest in the Chestnut Hill Railroad;

The leasehold interest in the Plymouth Railroad;

The leasehold interest in the Colebrookdale Railroad;

The leasehold interest in the East Pennsylvania Railroad;

The leasehold interest in the East Mahanoy Railroad Company and the Little Schuylkill Navigation Railroad and Coal Company;

The leasehold interest in the Schuylkill Valley Navigation and Railroad Company;

The leasehold interest in the Mill Creek and Mine Hill Navigation and Railroad Company.

The leasehold interest in the Mt. Carbon and Port Carbon Railroad;

The leasehold interest in the Mine Hill and Schuylkill Haven Railroad;

The leasehold interest in the canal and navigation works of the president, managers and company of the Schuylkill Navigation Company;

The leasehold interest in the canal and navigation works of the Susquehanna Canal Company;

The leasehold interest in the railroad of the Catawissa Railroad Company;

The leasehold interest in the railroad of the Pickering Valley Railroad Company;

The leasehold interest in the railroad known as the Philadelphia and Chester Branch;

The leasehold interest in the main line of the railroad of the North Pennsylvania Railroad Company, and the branches thereof known as the Delaware River Branch and the Doylestown Branch;

The leasehold interest in the railroad of the Delaware and Bound Brook Railroad Company, together with the branch known as the Trenton Branch;

The leasehold interest in the Schuylkill and Lehigh Railroad;

The leasehold interest in the Shamokin, Sunbury and Lewisburg Railroad;

And all real estate of said Railroad Company, wherever situated, owned by it at the date of the execution of said General Mortgage or by it thereafter in any manner acquired or held for its benefit or in trust for it; all other railroads then owned or thereafter constructed or acquired by purchase, merger or in any manner whatever by said Railroad Company; all other leasehold estates in any other railroads at any time after the execution of said General Mortgage acquired by lease, assignment or in any manner whatsoever by said Railroad Company; all branches, extensions, sidings and turnouts of all the said railroads and each of them; all advances made by said Railroad Company in the operation by it of the leased railroads forming part of the mortgaged property so far as the same are repayable, and all right and claim to the repayment thereof; all lands, rights of way, rails, bridges, walls, fences, workshops, machinery, stations, offices, depots, depot grounds, engine houses, buildings, improvements, tenements and hereditaments; all locomotives, tenders, passenger cars, baggage cars, freight cars, coal cars, and all other engines, cars, carriages and rolling stock, tools, implements and materials; and all steam colliers, ships, vessels and canal boats owned by said Railroad Company at the date of the execution of said General Mortgage, or by it thereafter at any time acquired; all and singular the tolls, rents, revenues, issues, profits and income of the Railroad Company derived from said railroads, canals and other property; all corporate and other rights, privileges, appurtenances and franchises of said Railroad Company, or connected with or relating to said mortgaged premises then owned by it or thereafter acquired; all the streets, ways, alleys, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of said mortgaged premises and estates

belonging or appertaining; and all the estate, right, title, interest, profit, claim and demand of every nature and kind whatsoever of the Railroad Company, as well at law as in equity, of, in and to the same and every part and parcel thereof.

Excepting, however, therefrom any property heretofore sold or conveyed by said Railroad Company under the powers reserved in said General Mortgage.

II.

One hundred and sixty thousand shares of the par value of fifty dollars each in the capital stock of The Philadelphia and Reading Coal and Iron Company.

III.

All shares and bonds of lines leased or controlled by The Philadelphia and Reading Railroad Company deposited with the undersigned as trustee under the said General Mortgage of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, dated January 3d, 1888, for which General Mortgage bonds have, under the terms of said General Mortgage, been issued, including the following:—

(1.) $192,340.47 of the mortgage loans of the Schuylkill Navigation Company, commonly known as Loans of 1872–1897.

(2.) $91,317.67 of the mortgage loans of the Schuylkill Navigation Company, commonly known as Loans of 1882–1907.

(3.) $119,000 of the loans of the Schuylkill Navigation Company, commonly known as the Loans of 1895.

(4.) $13,500 of the loan of the Schuylkill Navigation Company, commonly known as the Improvement Loan.

(5.) $71,500 of the boat and car loans of the Schuylkill Navigation Company.

(6.) $64,300 in the preferred stock of the Schuylkill Navigation Company.

(7.) $20,800 in the common stock of the Schuylkill Navigation Company.

(8.) The following securities and stocks of the Susquehanna Canal Company:—

First mortgage preferred	$227,000 00
First mortgage priority	96,810 58
Third mortgage six per cent	1,316,376 52
Fourth mortgage seven per cent	238,000 00
Stock	1,970,973 84

(9.) $239,300 in the first mortgage loan of the Pickering Valley Railroad Company.

(10.) $504,300 in the mortgage bonds of the Colebrookdale Railroad Company.

(11.) The following securities of the Catawissa Railroad Company:—

10 per cent. chattel mortgage bonds, 1868-1888	$98,450
5 per cent. chattel mortgage bonds, 1880	24,500
7 per cent. debenture bonds, 1917	62,000

AS THE SECOND PARCEL.

THE FOLLOWING PROPERTY OF THE PHILADELPHIA AND READING COAL AND IRON COMPANY:—

I.

The following coal lands, coal leases, iron-ore lands, furnace properties and other real estate:—

COAL LANDS.

No. 1. Trevorton estate.
2. Associate lands.
3. Zimmerman and Heller tracts.
4. John Boyd tract.
5. Shamokin and Bear Valley tracts.
6. M. E. Leverson tract.
7. William M. Rockafeller tract.
8. Big Mountain lands.
9. Wetherill, Gray, Cleaver, and Brady tracts.
10. Preston Miller survey.
11. Bittenbender lands.
12. George Schall tract.
13. McIntyre lands.
14. William Sheed tract.
15. Helfenstein lands.
16. Locust Mountain Summit Improvement Company lands.

17. Samuel Morgan tract.
18. Mount Carmel Coal and Iron Company lands.
19. Mount Carmel and Locust Mountain Coal Company lands.
20. Locust Dale estate.
21. Ashland estate.
22. Fountain Springs tract.
23. Necho Allen tract.
24. Locust Mountain tract.
25. William Jones tract.
26. Philadelphia and Mahanoy lands.
27. James McNeal tract.
28. Taggart tract.
29. Neifert tract.
30. Sheafer tract.
31. Kear and Patterson lands.
32. Ely and Richle tract.
33. Andrew Love tract.
34. Summit lands.
35. Tamaqua lands.
36. Coal Hill estate.
37. Wood and Abbot tract.
38. Guiterman or Tuscarora tract.
39. Glentworth tract.
40. Eagle Hill tract.
41. Mary Patterson tract.
42. Valley Furnace lands.
43. Lewis tracts.
44. Ravensdale tract.
45. Dilcamp tract.
46. Lee lands.
47. Repp and Keim tracts.
48. Repp's heirs' tract.
49. Saw Mill tract.
50. St. Clair tract.
51. Ellmaker tract.
52. Flowery Field tract.
53. West Flowery Field tract.
54. Mount Laffee tract.
55. Oak Hill tract.
56. Duncan lands.
57. Houston or Russell tract.
58. Coit tract.
59. Samuel Heffner tract.
60. Minersville tract.
61. Minersville Coal Reserve.
62. Carey and Hart tract.
63. Jommy Laing tract.
64. Diamond tract.
65. Gettle and Wagner lands.
66. Manhattan lands.
67. Catharine Groh tract.
68. Hammer and Hoy tract.
69. Phœnix Park tract.
70. Hughes and Langton tract.
71. Llewellyn tract.
72. Salem lands.
73. Little Klauser tract.
74. Reed tract.
75. Hartman and Myer tract.

76. Little Schall tract.
77. Big Schall tract.
78. Gunkel and Branham tracts.
79. Farquhar lands.
80. Green lands.
81. Swatara lands.
82. Schuylkill and Dauphin Improvement and Railroad Company lands.
83. Tower Meconkey *et al.* lands.
84. Francis Spatzer tract.
85. One-eighth of Joseph S. Silver tract.
86. Henry Houtz tract.
87. Alexander Klinger tract.
88. Philip Kunzleman tract.
89. Forbes and Delano lands.
90. Leonard Illig tract.
91. Peter Levengood tract.
92. Munson and Williams lands.
93. Keffer tract.
94. Fishing Creek tract (north).
95. Fishing Creek tract (south).
96. Michael Seltzer tract.
97. Schuylkill and Susquehanna lands.
98. Peter Kessler tract.

Coal Leases.

99. Lease from the Preston Coal and Improvement Company.
100. Lease from the Delaware Coal Company.
101. Lease from the Mammoth Vein Coal and Iron Company.
102. Lease from the Tremont Coal Company.
103. Lease of Green tract.
104. Lease of Henry Miller and Sarah Moore tracts.
105. Lease of Conrad Mertz tract.
106. Lease of Hepburn tract.
107. Lease of one-fourth of Bernard Hubley tract.
108. Lease of part of Andrew Lytle tract.
109. Lease of one-eighth of the Alexander Klinger tract.
110. Lease of one-half of Kinnear, Meyer, and Spaetzer tracts.
111. Lease of Nancy Kinnear tract.
112. Lease of Flowery Field, Saw Mill and Ellmaker tracts and Lee lands.
113. Lease of West Bear Ridge Colliery.
114. Lease of East Bear Ridge Colliery.
115. Lease of Henry Clay Colliery.
116. Lease of Peerless Colliery.
117. Lease of Buck Ridge Colliery.
118. Lease of Girard, Mammoth and Cuyler Collieries.
119. Lease of Union, or North Ashland, Colliery.
120. Lease of Hammond and Conner Collieries.
121. Lease of Girard Colliery.

Iron-Ore Lands.

122. Putnam Valley, New York, lands.
123. Putnam County, New York, ore lands.
124. Nelson County, Virginia, iron-ore lands.
125. Nelson and Amherst Counties, Virginia, iron-ore lands.

126. Albemarle County, Virginia, iron-ore lands.
127. Seasholtzville, Pa., land.
128. Big Pond, Pa., estate.
129. Boiling Spring lease, Pennsylvania.
130. Heim and Vanasdlen lands.

Furnace Properties.

131. Bechtelsville.
132. Swede.
133. Kutztown.
134. East Penn.
135. Emaus.
136. St. Clair.
137. Ringgold.
138. Monocacy.
139. Port Carbon Furnace and Rolling Mill.
140. Powhatan Furnace, Virginia.

Other Real Estate.

141. Office building and lot, Pottsville.
142. Acre lot, Branch Township.
143. Tower City lands.
144. Lot of ground, Chestnut Street, Reading.
146. Adams Street Depot, Brooklyn, N. Y.
147. Twenty-ninth Street Depot (leasehold), New York City.
148. New Bedford Depot, Massachusetts.
149. Newburyport Depot, Massachusetts.
150. Salem Depot (leasehold), Massachusetts.
151. Pottsville shops.
152. Bellefonte lots.
153. Surface—Town of Locust Dale.
154. Surface—Ashland.
155. Hegins Township lot.
156. Port Carbon lots.
157. Berks County lands.
158. Lot at Preston.
159. Various Schuylkill County lands.
160. Cameron Township lands.

And all other real estate of said Coal and Iron Company, wherever situate, owned by it at the date of the execution of said General Mortgage, or by it thereafter in any manner acquired or held for its benefit or in trust for it; all railroads and all branches, extensions, sidings and turnouts of any railroad then belonging to said Coal and Iron Company, or thereafter constructed or in any manner acquired by it, all lands, coal leases, iron-ore leases, mines, collieries, breakers, engines, workshops, machinery, offices, buildings, improvements, tenements

and hereditaments then owned by it or by it thereafter in any manner acquired or for its benefit or in trust for it; all yards, depots and wharves; all locomotives, tenders, coal cars, carriages and all other engines, cars, rolling stock, tools, implements, horses, mules and materials; and all corporate and other rights, privileges, appurtenances and franchises of said Coal and Iron Company or connected with or relating to the said lands, coal or iron mines, railroad or other premises, or any of them, owned by said Coal and Iron Company at the date of the execution of said General Mortgage, or by it at any time thereafter constructed or acquired; all and singular the tolls, rents, revenues, issues, profits and income of the Coal and Iron Company derived from said railroad, canals, coal or iron mines and other property; and all streets, ways, alleys, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatever unto any of the said mortgaged premises and estates belonging or appertaining; and all the estate, rights, title, interest, profit, claim and demand of every nature and kind whatsoever of the Coal and Iron Company, as well at law as in equity, of, in and to the same and every part and parcel thereof.

Excepting therefrom any property heretofore conveyed and transferred under the powers reserved in said General Mortgage.

II.

The following shares of the capital stock of other corporations owned by said Coal and Iron Company, but subject to a prior pledge thereof by it to The Philadelphia and Reading Railroad Company under a mortgage dated July 1st, 1874, viz.:—

Name of Company.	No. of Shares.
Preston Coal and Improvement Company	56,683
Fulton Coal Company	63,537
Locust Gap Improvement Company	50,522
Tremont Coal Company	118,354
Mammoth Vein Coal and Iron Company	59,727
Delaware Coal Company	4,716

All property, real and personal, of every character and description, which, or any beneficial interest in which, has been acquired by the Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company in the course of the operation and management of either of said two parcels or pertaining thereto, or to which, or to any beneficial interest in which, they are or may become entitled, will be sold in connection with such parcels respectively, including all income, proceeds of income, bills and accounts receivable, cash and other property received by said Receivers in the management or operation of such parcel or pertaining thereto, and any and all property appurtenant to such parcel or pertaining thereto and acquired for use in connection with or for the purposes of such parcel or the business of said Railroad Company, or of said Coal and Iron Company in connection therewith and vested in or standing in the name of the said Receivers, or to which said Receivers in any manner shall have acquired title, at the time of delivery to the purchaser of such parcel; all equipment and all coal in possession of said Receivers at the time of the delivery of such parcel to be delivered as part of and in connection with the parcel in respect of which it shall have been acquired or received by said Receivers.

AS THE THIRD PARCEL.

THE FOLLOWING SECURITIES AND STOCKS PLEDGED AS SECURITY FOR SAID GENERAL MORTGAGE BY CERTAIN RECONSTRUCTION TRUSTEES OF THE PHILADELPHIA AND READING RAILROAD COMPANY:—

I.

General mortgage bonds of The Philadelphia and Reading Railroad Company, secured by a mortgage of said Railroad Company, dated July 1st, 1874, to the Fidelity Insurance, Trust and Safe Deposit Company, trustee, $24,457,000;

Income mortgage bonds of The Philadelphia and Reading Railroad Company, secured by a mortgage of said Railroad Company, dated December 1st, 1876, to Edwin M. Lewis, trustee, $8,493,810;

First series five per cent. consolidated mortgage bonds of The Philadelphia and Reading Railroad Company, secured by mortgage of said Railroad Company, dated August 26th, 1882, to The Pennsylvania Company for Insurances on Lives and Granting Annuities, of the city of Philadelphia, trustee, $184,606;

Second series five per cent. consolidated mortgage bonds of The Philadelphia and Reading Railroad Company, secured by said mortgage, dated August 26th, 1882, $6,131,404;

(1.) $1,493,249.73 of the mortgage loans of the Schuylkill Navigation Company, commonly known as the Loans of 1872–1897;

(2.) $3,849,828.67 of the mortgage loans of the Schuylkill Navigation Company, commonly known as the Loans of 1882–1907;

(3.) $1,062,000 of the loan of the Schuylkill Navigation Company, commonly known as the Loan of 1895;

(4.) $214,500 of the loan of the Schuylkill Navigation Company, commonly known as the Improvement Loan;

(5.) $669,550 of the boat and car loan of the Schuylkill Navigation Company, due in 1913;

(6.) $579,350 of the boat and car loan of the Schuylkill Navigation Company, due in 1915;

(7.) Sixty-four thousand five hundred and eighty shares of the preferred stock of the Schuylkill Navigation Company;

(8.) Twelve thousand five hundred and fifty-four shares of the common stock of the Schuylkill Navigation Company.

Under the provision of said decree the purchaser of any parcel, his successors or assigns, upon payment of the purchase price bid therefor, or upon making such provision as the court shall direct for the payment thereof, shall be let into possession of the property embraced in

the conveyance thereof, including all property, real and personal, of every character and description, which, or any beneficial interest in which, has been acquired by the Receivers in the course of the operation and management of the mortgaged property embraced in such conveyance or pertaining thereto, or to which, or to any beneficial interest in which, they are or may become entitled, including all income, proceeds of income, bills and accounts receivable, cash and other property, received by the Receivers in the management or operation of the mortgaged premises embraced in such conveyance or pertaining thereto, and any and all property appurtenant to the premises embraced in such conveyance or pertaining thereto and acquired for use in connection with or for the purposes of such premises or for the business of said Railroad Company or of said Coal and Iron Company in connection therewith and vested in or standing in the names of the said Receivers, or to which said Receivers in any manner shall have acquired title at the time of delivery to such purchaser of the property embraced in such conveyance; all equipment and all coal in possession of the Receivers at the time of the delivery of the conveyance of any such parcel to be delivered as part of and in connection with the parcel, in respect of which it shall have been acquired or received by the Receivers.

For a fuller and more detailed description of the property subject to said General Mortgage, reference is made to said decree and to said General Mortgage.

The entire mortgaged and pledged property of every description of said The Philadelphia and Reading Railroad Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire mortgaged and pledged property of every description of the said The Philadelphia and Reading Coal and Iron Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire property pledged by said reconstruction trustees, will be sold severally and respectively

in each case as a whole, and as the first parcel, the second parcel and the third parcel respectively, as above set forth.

Subject, however, to the right of a majority in interest of the General Mortgage bonds outstanding, by requisition in writing, to be delivered to the undersigned trustee at any time before such sale, to direct such trustee to sell said properties in such parcels as they may deem best.

No bid will be received in respect of the mortgaged property, or of any parcel thereof separately offered from any one offering to bid, who shall not first deposit as pledge that he will make good his bid in case of its acceptance, the sum of $200,000 in money or in certified check or checks on a national bank or banks in the city of Philadelphia or the city of New York, or $400,000, par value, of the bonds secured by said General Mortgage with all unpaid coupons attached. The deposit so received from any unsuccessful bidder will be returned to him when the property shall be struck down, and the deposit received from any successful bidder will be held by the undersigned trustee subject to the further order of said court to be applied on account of the purchase price of the property for which such bid was made.

On the acceptance of any bid the purchaser must forthwith deposit with the undersigned trustee the sum of $500,000 in money or in certified check or checks on any national bank or banks, or trust company or trust companies, in the city of Philadelphia or the city of New York, or $1,000,000, par value, of the bonds secured by said General Mortgage; but any cash or bonds which may have been previously deposited by the successful bidder as a pledge that he would make good his bid will be received on account of the amount so required of him on the acceptance of his bid.

In case any bidder or purchaser shall fail to make good his bid upon its acceptance by the trustee, or shall fail after such acceptance to comply with any order of said court relating to the payment thereof or the con-

summation of the purchase, then the sums in cash or bonds deposited by such purchaser or purchasers will be forfeited as a penalty for such failure, and will be applied towards the payment of the expense of a resale and towards making good any deficiency or loss in case such property shall be sold at a price less than that bid at the prior sale.

If the court shall not confirm the sale for which a deposit shall have been made, such deposit will be returned to the bidder.

Upon confirmation of any sale by said court the purchaser must make further payment or payments, in cash, on account of his bid as from time to time the court may direct. The purchaser of any parcel may satisfy and make good any part of his bid not required to be paid in cash by turning in to be canceled or credited any of the bonds and matured and unpaid interest secured by said General Mortgage and held by such purchaser, counting such bonds and interest for that purpose at the sum which shall be payable to the holder thereof out of the net proceeds of such sale of such parcel as his just share of such net proceeds after allowing for the proportion of the payment which may be required in cash; and if such share of such net proceeds shall be less than the amount then due upon such bonds, such purchaser may make such settlement by receipting on such bonds the amount to be credited thereon. In case the purchaser thereof shall omit to make any payments on account of any unpaid balance of the purchase price within thirty days after the entry of an order requiring such payment, the court may resell any parcel upon such notice as it may direct.

The purchaser or purchasers of the property of said The Philadelphia and Reading Railroad Company subject to said General Mortgage must, as part consideration and in addition to the sum bid for such property, take the same and receive the deed or deeds therefor on the express condition that, to the extent that the assets or the proceeds of assets in the hands of the Receivers in the above-

entitled cause shall be insufficient, such purchaser or his successors or assigns shall pay, satisfy and discharge any unpaid compensation which shall be allowed by the court to said Receivers, and any indebtedness, obligation or liabilities which shall have been contracted or incurred by said Receivers, before they shall have delivered possession of the property sold, whether or not represented by certificates; and also any indebtedness or liability contracted or incurred by said The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, or either of them, in the operation of the mortgaged property, prior to the appointment of said Receivers, which is prior in lien or superior in equity to said General Mortgage, and which shall not be paid or satisfied out of the income of the property in the hands of said Receivers, or out of the assets or out of the proceeds of the assets in their hands, upon the court adjudging the same to be prior in lien or superior in equity to said General Mortgage and directing payment thereof.

All payments for any such purpose made by the purchaser in advance of the final accounting and discharge of the Receivers will be treated as advances and subject to final adjusting on such accounting.

For the purpose of enforcing such payment in accordance with said decree, the court retains jurisdiction of said cause, and reserves the right to retake and resell said railroad property in case the purchaser or purchasers, his or their successors or assigns, shall fail to comply with any order of the court for the payment of such prior indebtedness or liability within thirty days after the service of the copy of such order.

The purchaser or purchasers of any parcel constituting part of the mortgaged property must take the same subject to the performance by him or them, or his or their successors and assigns, of all pending contracts theretofore lawfully made by the Receivers in respect thereof.

For further particulars reference is hereby made to the above-mentioned decree.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES,
By
HENRY N. PAUL,
President.

JOHN G. JOHNSON,
FREDERICK W. WHITRIDGE,
GEORGE L. RIVES,
Solicitors.

Dated PHILADELPHIA, June, 1896.

NOTICE OF APPEARANCE FOR PURCHASERS.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.

In Equity.

April Sessions, 1895.

No. 9.

SIR:—Please enter my appearance in the above-entitled action as solicitor for Charles H. Coster and Francis Lynde Stetson, purchasers of the assets and property sold September 23d, 1896, by Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, as Receivers under the decree entered therein.

FRANCIS LYNDE STETSON,
Solicitor for the said Purchasers.

GEORGE F. BAER,
Of Counsel.

To the Clerk of the Circuit Court of the United States for the Eastern District of Pennsylvania.

PETITION OF PURCHASERS FOR CONFIRMATION OF RECEIVERS' REPORT OF SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.

In Equity.

April Sessions, 1895.

No. 9.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA:

The petition of Charles H. Coster and Francis Lynde Stetson respectfully shows to the court as follows:—

Upon the twenty-third day of September, 1896, your petitioners attended upon the sale ordered and decreed in this cause by the decree entered herein May 1st, 1896, to be made by the Receivers therein mentioned, and at such sale they did, as joint tenants, and not as tenants in common, become the highest and best bidders for each and all of the assets and property embraced in such sale, being all the parcels mentioned in said decree, all as is set forth in the report thereof made by Joseph S. Harris Edward M. Paxson and John Lowber Welsh, as Receivers conducting such sale on the said twenty-third day of September, 1896.

And thereupon your said petitioners beg leave to intervene and to be made parties in this suit, and further

pray and move that the said report of sale made and filed herein by Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, the Receivers herein, be approved and confirmed.

C. H. COSTER,
FRANCIS LYNDE STETSON,
Purchasers.

FRANCIS LYNDE STETSON,
Solicitor.

GEORGE F. BAER,
Counsel.

STIPULATION FOR CONFIRMATION OF RECEIVERS' REPORT OF SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.

In Equity.

April Sessions, 1895.

No. 9.

And now come the parties in the above-mentioned consolidated cause, and also the purchasers, Charles H. Coster and Francis Lynde Stetson, by their respective solicitors, and waive further time to file exceptions to the report of the sale made by the Receivers, pursuant to said decree entered herein; and consent that the motions of the complainant and of the purchasers to confirm said sale and the report of the Receivers made thereon may be now heard and determined and all questions thereunder adjudicated.

THOMAS HART, JR.,
SAML. DICKSON,

Solicitors for The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, Defendants.

JOHN G. JOHNSON,
FREDERICK W. WHITRIDGE,
GEORGE L. RIVES,

Solicitors for The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainants.

FRANCIS LYNDE STETSON,

Solicitor for Purchasers.

PETITION OF PURCHASERS FOR CONFIRMATION OF TRUSTEES' REPORT OF SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,	
vs.	In Equity.
The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.	April Sessions, 1895. No. 9.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA:

The petition of Charles H. Coster and Francis Lynde Stetson respectfully shows to the court as follows:—

Upon the twenty-third day of September, 1896, your petitioners attended upon the sale ordered and decreed in this cause by the decree entered herein May 1st, 1896, to be made by The Pennsylvania Company for Insurances on Lives and Granting Annuities, the trustee therein mentioned, and at such sale they did become the highest and best bidders for each and all of the assets and property embraced in such sale, being all the parcels mentioned in said decree, all as is set forth in the report thereof made by The Pennsylvania Company for Insurances on Lives and Granting Annuities, the trustee, as conducting such sale on the said twenty-third day of September, 1896.

And thereupon your said petitioners beg leave to intervene and to be made parties in this suit, and further pray and move that the said report of sale made and filed herein by The Pennsylvania Company for Insurances on Lives and Granting Annuities, the trustee herein, be approved and confirmed; but that inasmuch as your said petitioners have purchased the one hundred and sixty thousand shares of the capital stock of The Philadelphia and Reading Coal and Iron Company sold by the trustee under the said decree, and therefore are interested in the preservation of the corporate existence of that company, your petitioners will not ask for a confirmation of the sale or for a conveyance of the corporate rights, privileges and appurtenances and franchises of said Coal and Iron Company.

C. H. COSTER,
FRANCIS LYNDE STETSON,
Purchasers.

FRANCIS LYNDE STETSON,
Solicitor.

GEORGE F. BAER,
Counsel.

STIPULATION FOR CONFIRMATION OF TRUSTEE'S REPORT OF SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.

In Equity.

April Sessions, 1895.

No. 9.

And now come the parties in the above-mentioned consolidated cause, and also the purchasers, Charles H. Coster and Francis Lynde Stetson, by their respective solicitors, and waive further time to file exceptions to the report of the sale made by the trustee pursuant to said decree entered herein; and consent that the motions of the complainant and of the purchasers to confirm said sale and the report of the trustee made thereon may be now heard and determined, and all questions thereunder adjudicated.

THOMAS HART, JR.,
SAM'L DICKSON,

Solicitors for The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, Defendants.

JOHN G. JOHNSON,
FREDERICK W. WHITRIDGE,
GEORGE L. RIVES,

Solicitors for The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant.

FRANCIS LYNDE STETSON,

Solicitor for Purchasers.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.

In Equity.

April Sessions, 1895.

No. 9.

SEPTEMBER 23d, 1896.

Now come again all the parties, by their respective solicitors, and come also the purchasers, Charles H. Coster and Francis Lynde Stetson, and there came on to be heard the petitions of the said purchasers that the report of Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers, and the report of The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee, filed this twenty-third day of September, 1896, should be approved, and that there should be confirmed and made absolute the sales to the said purchasers this day made by the said Receivers and by the said trustee respectively, all as set forth in the said reports of sale this day filed; whereupon it is

Ordered and decreed, That the said petitions and motions for confirmation be, and the same are hereby, set down for hearing in the Circuit Court of the United States for the Eastern District of Pennsylvania, at a term thereof to be held in the city of Philadelphia, in the Post Office Building, upon Saturday, October 3d, 1896, at ten o'clock in the forenoon, at which place and time the parties in interest are required to show cause why the said peti-

tions and motions should not be granted, and why said reports of sale should not be approved and such sales confirmed and made absolute.

Let a copy of this order be published for at least one week preceding such date in each of the daily newspapers in the city of Philadelphia in which was published the trustee's notice of sale herein.

M. W. ACHESON,
Circuit Judge.

DECREE CONFIRMING RECEIVERS' SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,	
vs.	In Equity.
The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.	April Sessions, 1895. No. 9.

Now come again all the parties, by their respective solicitors, and come also the purchasers, Charles H. Coster and Francis Lynde Stetson, and there came on to be heard their petition that the report of Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers, heretofore filed herein, should be approved, and that there should be confirmed and made absolute the sale to the said Charles H. Coster and Francis Lynde Stetson of all the assets of every nature and description in the hands of said Receivers and not by the final decree of foreclosure and sale entered herein May 1st, 1896, adjudged to be subject to the lien of the General Mortgage mentioned in said decree, such assets having been briefly described in the Receivers' notice of sale, and more specifically stated in the statement and the amended and supplemental statement heretofore filed herein with the clerk of this court, as required by said decree and stated in said Receivers' notice of sale and report of sale.

And it appearing by the said report of the Receivers that they have fully complied with the directions of said

decree as to the sale of all such assets in their hands not in said final decree of foreclosure and sale adjudged to be subject to the lien of the General Mortgage, and that such purchasers, Charles Henry Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, were the highest and best bidders for all such property and assets sold as a single parcel, and that the same were accordingly struck off to them for the sum of $4,500,000, subject, however, to the terms prescribed by said decree in respect of the sale made thereunder by the trustee under said General Mortgage of the premises and property by said decree adjudged to be subject to said General Mortgage, for full and detailed statement of which reference is made to said decree and to said notice of sale by the Receivers;

And it further appearing by said Receivers' report and by the said petition of said purchasers, that the said purchasers have made the payments thus far obligatory upon them, and have paid over to the said Receivers in cash for and on account of their bid and in payment thereon the sum of $300,000, and no sufficient cause being shown against the report of the said Receivers or the granting of the petition of the said purchasers;

Now, on motion of Thomas Hart, Jr., and Samuel Dickson, solicitors for the Receivers; John G. Johnson, Frederick W. Whitridge and George L. Rives, solicitors for the complainant; and Francis Lynde Stetson, solicitor, and George F. Baer, counsel for the purchasers, and all consenting that said motion for confirmation of said sale and of the said report of said Receivers made thereon may now be heard and determined and all questions thereunder adjudicated,

It is ordered, adjudged and decreed as follows, to wit:—

1. The said report of Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers herein, is in all things approved, and the sale by them made to Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, of all the assets of every

nature and description in the hands of said Receivers and not by the final decree of foreclosure and sale entered herein May 1st, 1896, adjudged to be subject to the lien of the General Mortgage mentioned in said decree, such assets having been briefly described in the Receivers' notice of sale, and more specifically stated in the statement and the amended and supplemental statement heretofore filed with the clerk of this court as required by said decree and as stated in said Receivers' notice of sale, at and for the sum of $4,500,000, be and the same is hereby in all respects ratified, approved, confirmed and made absolute;

Subject, however, to the terms prescribed by said decree in respect of the sale to be made by the trustee under said General Mortgage of the premises and property by said decree adjudged to be subject to said General Mortgage, for a full and detailed statement of which reference is hereby made to said decree and to said notice of sale.

And this court expressly reserves and retains jurisdiction of this cause and power to enforce all the provisions of said former decree and of this decree, including the right to retake and resell any of said assets and property in case the said purchasers, their successors or assigns, shall fail to comply with any order of this court in respect of any of the terms or conditions of said decree or of this decree within thirty days after the entry of any such order.

And it is further ordered, adjudged and decreed That upon the full payment to the said Receivers of the full amount of the bid of the said purchasers, the said Receivers be, and they are hereby authorized and directed to transfer and to deliver all such assets and property of every nature and description to the said purchasers, and also to execute and deliver to such purchasers, or their successors or assigns, any and all such deed or deeds as may be necessary or proper fully and completely to vest in and transfer to such purchasers or their successors or assigns the full and complete title and interest in and to

all such assets and property, subject only to the conditions of said former decree and of this decree, and to the several and respective liabilities and obligations set forth in the said notice and the said statement and the said supplemental and amended statement given and filed by the said Receivers as aforesaid. The Receivers may in their discretion deposit any part of the purchase moneys received or to be received by them in any national bank or trust company in the city of Philadelphia or the city of New York.

M. W. ACHESON,
Circuit Judge.

Dated OCTOBER 3d, 1896.

DECREE CONFIRMING TRUSTEE'S SALE.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,	
vs.	In Equity.
The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.	April Sessions, 1895. No. 9.

Now come again all the parties, by their respective solicitors, and come also the purchasers, Charles H Coster and Francis Lynde Stetson, and there came on to be heard the petition of the said purchasers that the report of The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee, filed the twenty-third day of September, 1896, should be approved, and that there should be confirmed and made absolute the sale to the said purchasers that day made by the said trustee, all as set forth in the said report of sale that day filed.

And it having heretofore been ordered and decreed that the said petitions and motions for confirmation be set down for hearing in the Circuit Court of the United States for the Eastern District of Pennsylvania, at this place and time, and a copy of such order having been duly published for at least one week preceding this date, in each of the daily newspapers in the city of Philadelphia in which was published the trustee's notice of sale herein.

And it appearing by the report of said trustee, so filed as aforesaid, that it has fully complied with the directions in said decree as to the sale of all and singular the mortgaged and pledged property by said decree adjudged to be subject to the General Mortgage and by said decree directed to be sold, such property constituting the first parcel, the second parcel and the third parcel respectively mentioned in said decree, and that such purchasers, Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, were the highest and best bidders for all such railroads, property, rights, privileges and franchises sold in three separate parcels as provided in said decree, and that the said three parcels were respectively struck off to the said purchasers as joint tenants, and not as tenants in common, for the following sums and upon the following terms, to wit:—

THE FIRST PARCEL for the sum of $7,500,000; subject, however, as to the portions thereof covered thereby, to the lien of certain mortgages executed by The Philadelphia and Reading Railroad Company to secure bonds which were outstanding January 3d, 1888, for the aggregate principal sum of $42,785,173.85.

THE SECOND PARCEL for the sum of $7,500,000; subject, however, as to any portion thereof covered thereby, to the lien of certain mortgages by The Philadelphia and Reading Coal and Iron Company to secure obligations to an aggregate principal amount of $12,500,000.

THE THIRD PARCEL for the sum of $1,000,000.

And all such sales having been made also subject to the terms, conditions, reservations and obligations in the decree of sale heretofore made herein, including those therein described in respect of (*a*) the Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Com-

pany, including the Receivers' agreement with the City of Philadelphia concerning the Pennsylvania Avenue Subway, of which notice was given at the sale; (*b*) the certificates of the said Receivers; (*c*) claims against the said Receivers; (*d*) claims against the said Railroad Company or against the said Coal and Iron Company for unpaid indebtedness or liabilities contracted or incurred by such company in the operation of the mortgaged property prior to the appointment of the Receivers, and which may be adjudged prior in lien or superior in equity to said General Mortgage; (*e*) the Philadelphia, Reading and New England Railroad Company and the holders of its bonds and shares.

And it further appearing by such trustee's report, and by the said petition of the said purchasers, that the said purchasers have made the payments thus far obligatory upon them, and have delivered over to the Special Master, for and on account of the bids, and in payment thereon, bonds secured by said General Mortgage (such bonds having all the unpaid coupons thereto attached) as follows, to wit:—

For and on account of their bid for the said first parcel, $1,000,000 of such bonds.

For and on account of their bid for the said second parcel, $1,000,000 of such bonds.

For and on account of their bid for the said third parcel, $1,000,000 of such bonds.

And it further appearing by their statement in open court that the said purchasers are now the owners and holders of other bonds secured by said General Mortgage to an amount exceeding $42,000,000 principal.

And no sufficient cause being shown against the report of the trustee or the granting of the petition of the said purchasers:

Now, on motion of John G. Johnson, Frederick W. Whitridge and George L. Rives, solicitors for the complainant, and of Francis Lynde Stetson, solicitor, and George F. Baer, of counsel for the purchasers, all the other parties to the records appearing by counsel, and

all consenting that the said motion for confirmation of said sale and of the said report of said trustee made thereon may be now heard and determined, and all questions thereunder adjudicated.

It is hereby ordered, adjudged and decreed as follows, to wit:—

1. The said report of The Pennsylvania Company for Insurances on Lives and Granting Annuties, the trustee, is in all things approved, and the respective sales by it made to the said Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, of all and singular the mortgaged and pledged property of every description of said The Philadelphia and Reading Railroad Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire mortgaged and pledged property of every description of said The Philadelphia and Reading Coal and Iron Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire property pledged to the complainant by the reconstruction trustees, as set forth in the bill of complaint in this cause, constituting the first parcel, the second parcel and the third parcel respectively, designated in the decree of foreclosure and sale made and entered on the first day of May, 1896:

At the sum of $7,500,000 for said first parcel;

At the sum of $7,500,000 for said second parcel; and

At the sum of $1,000,000 for said third parcel;

be and the same are respectively in all things ratified, approved and confirmed, and made absolute.

Subject, however, to all equities reserved, and to all and singular the terms and conditions of purchase as recited in such decrees, which terms and conditions, by reference thereto, are hereby incorporated in this decree with the same force and effect as though set forth at length, and subject to the payment of their proportionate part of the purchase price, which is hereby required to be paid by the purchasers or by their assigns when and as requested

respectively by the several holders of bonds or coupons secured by said General Mortgage not turned in by the purchasers, and also subject to the further terms and provisions hereinafter contained.

And this court expressly reserves and retains jurisdiction of this cause, and power to enforce all the provisions of said decrees and of this decree, including the right to retake and resell any of the said three parcels thereof, in said former decree designated as the first parcel, the second parcel or the third parcel, in case said purchasers or their assigns shall fail to comply with any order of this court in respect of the payment of any of the prior indebtedness, obligations or liabilities required in said decrees, or in respect of any other of the terms or conditions of the said decree or of this decree within thirty days after the entry of such order.

And it further appearing that the said purchasers own and are prepared to deliver to the trustee, to be canceled or credited, as provided in said decree, on account of the respective bids of the said purchasers, additional bonds and coupons of The Philadelphia and Reading Coal and Iron Company secured by the said General Mortgage, dated January 3d, 1888, to an aggregate amount exceeding $8,500,000 of said General Mortgage bonds, with all unpaid coupons thereto attached, and exceeding $33,500,000 of said General Mortgage bonds, with all coupons maturing on or after July 1st, 1896, thereto attached, making with the other of said General Mortgage bonds deposited as aforesaid at the time of the acceptance of their bid at least $45,000,000 of said General Mortgage bonds in all.

Now, therefore, it is further ordered and decreed, That upon the delivery and tender of such bonds secured by the said General Mortgage, or of any other of such bonds or claims for interest so secured, by the purchasers to the trustee for the purpose of having credited thereon such sum as shall be payable to the purchasers as holders thereof out of the net proceeds of such sale, as their just

share of such net proceeds, after allowing for the proportion of the payment of the purchase price required to be paid in cash, the trustee be and it is hereby authorized to sign, seal, execute and deliver a deed or deeds of conveyance to the said Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, or to their assigns, conveying to them all and singular the said three parcels, being the entire mortgaged and pledged property of every description of said The Philadelphia and Reading Railroad Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire mortgaged and pledged property of every description of said The Philadelphia and Reading Coal and Iron Company, including all property and credits acquired by the Receivers from the operation thereof, and the entire property pledged to the complainant by the reconstruction trustees as set forth in the bill of complaint in this cause, so as aforesaid sold under said decree as the first parcel, the second parcel and the third parcel, together with all property, real and personal, of every character and description, or any beneficial interest therein, acquired by the Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company in the course of the operation and management of either of the two parcels designated as the first parcel and the second parcel, or pertaining thereto, or to which, or to any beneficial interest in which, they are or may become entitled, including all income, proceeds of income, bills and accounts receivable, cash, materials, supplies and other property received by the said Receivers in the management or operation of said parcels or pertaining thereto, and any and all property appurtenant to said parcels or pertaining thereto and acquired for use in connection with or for the purposes of such parcels or the business of said Railroad Company or of said Coal and Iron Company or in connection therewith, invested in or standing in the name of said Receivers, or to which said Receivers in any manner shall have acquired title, at the

time of delivery to the purchasers of such parcel; all equipment and all coal in possession of said Receivers at the time of the delivery of such parcel to be delivered as part of and in connection with the parcel in respect of which it shall have been acquired or received by the said Receivers.

Subject, however, and upon the express condition, that to the extent that the assets or the proceeds of assets in the Receivers' hands shall be insufficient, such purchasers, or their assigns, shall pay, satisfy and discharge (*a*) any unpaid compensation which shall be allowed by the court to the Receivers; (*b*) any indebtedness, obligations or liabilities which shall have been duly contracted or incurred by the Receivers before delivery of possession of the property sold; and (*c*) also any unpaid indebtedness or liability contracted or incurred by defendants The Philadelphia and Reading Railroad Company or The Philadelphia and Reading Coal and Iron Company in the operation of the mortgaged property prior to the appointment of the Receivers, and which is prior in lien or superior in equity to said General Mortgage, except such as shall be paid or satisfied out of the income of the property in the hands of the Receivers or out of the assets or out of the proceeds of assets in their hands upon the court adjudging the same to be prior in lien or superior in equity to said mortgage and directing payment thereof, all payments for any such purpose made by the purchaser in advance of the final accounting and discharge of the Receivers to be treated as advances and subject to final adjustment upon such accounting: *Provided, however*, That upon publication by the Special Master, when ordered by the court, as provided in said decree, of a notice requiring holders of any claims to present the same for allowance, any such claims which shall not be so presented or filed within the period of six months after the first publication of such notice shall not be enforceable against the property sold or against the purchaser, its successors or assigns.

And subject also to the payment by said grantees, their

successors or assigns of such sums in cash as may be required in order to pay all costs and expenses of the sale, the compensation of the trustee, and all charges, compensations, allowances and disbursements payable out of the purchase price bid for the premises, as the same shall be fixed and allowed by the court.

Such deed shall be substantially in the form of the proposed deed of conveyance, of which a copy is herewith filed, the same being hereby approved; and in order to facilitate the recording thereof, six originals of such deed may be executed, acknowledged and delivered by the said trustee, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original, and all collectively but one instrument.

It is further ordered and decreed, That such conveyance shall provide that the purchasers, or their assigns, shall have the right, within ninety days after the completion of the sale and delivery of the deed, to elect whether or not to assume or adopt any of the leases and contracts sold with the said first parcel or the said second parcel they shall elect to accept and assume, and neither such purchasers, nor their assigns, shall be held to have accepted or to have assumed any such leases or contracts which they shall so elect not to accept or assume.

On exhibition of the deed executed and delivered by the trustee as herein ordered, and upon the written request of the grantee thereunder, the Receivers of this court are authorized, directed and required to let the said purchasers and their assigns into possession of the premises conveyed; and the Receivers, or any party in this cause having possession thereof, shall deliver such property over to the purchasers or their assigns, together with any and all income, proceeds of income, bills and accounts receivable, cash, and other property acquired, received by the Receivers in the management or operation of the mortgaged premises to be embraced in the conveyance thereof or pertaining thereto, and also any and all

property appurtenant to the premises and required for use in connection with or for the purposes or business of said companies invested in or standing in the name of the said Receivers, or to which the said Receivers in any manner have acquired title.

And it is further ordered and decreed, That the Receivers of this court also shall make conveyances to the said purchasers, their successors or assigns, as required by said decrees.

It is further ordered and decreed, That by way of further assurance and confirmation of title to such purchasers or their assigns, the said Philadelphia and Reading Railroad Company and the said Philadelphia and Reading Coal and Iron Company, mortgagors, each by its proper officers and under its corporate seal, shall, upon request of said purchasers or their assigns, join in said deeds to be executed by the Trustee, or if so requested shall sign, seal, execute acknowledge and deliver to such purchasers, or to their assigns, separate deeds of conveyance, transfer, release and further assurance of all the railroad, property and franchises sold under the decree of this court, so as fully and completely to transfer to and invest in the said purchasers and their assigns the full legal and equitable title to all such railroad, property and franchises hereby sold or intended to be sold.

And it appearing by their said petition that the said purchasers have purchased the one hundred and sixty thousand shares of the capital stock of The Philadelphia and Reading Coal and Iron Company sold by the trustee, and that, therefore, they are interested in the preservation of the corporate existence of that company, it is further ordered and decreed that neither of said decrees, nor said sale, nor any conveyance thereon, shall be construed as in any manner or to any extent affecting or divesting the corporate rights, privileges, appurtenances or franchises of said Coal and Iron Company.

The court reserves full power, notwithstanding such conveyance and delivery of possession, to retake and resell

the property this day confirmed to such purchasers if they, or their assigns, shall fail or neglect fully to complete such purchase and comply with the orders of court in respect to full compliance therewith, or to pay into court, in accordance with such decrees of sale and orders of court, all sums of money hereafter ordered by the court to be paid to discharge any unpaid compensation which shall be allowed by the court to the complainant or to the Receivers, and any indebtedness and obligations or liabilities which shall have been contracted or incurred by the Receivers before delivery of the possession of the property sold, whether or not represented by certificates, and also any and all such debts liens or claims as it may decree ought to be paid out of the proceeds of sale in preference to the mortgage herein foreclosed; and also any and all sums which shall be due and payable to other holders of such General Mortgage bonds not turned in by the purchasers as their proportionate part of the purchase price.

The trustee shall deposit the cash paid to it by the purchasers with any national bank or any trust company in the city of Philadelphia or the city of New York, to abide the further order of the court herein, and shall deposit to its order with the Central Trust Company of New York all the bonds and coupons delivered by the purchasers, so that the same may be stamped with the credit or payment on account thereof upon such bid after the amount thereof shall be adjudged by the court, such bonds, coupons and scrip thereafter to be returned to the said purchasers.

It is further ordered and decreed, That until Frederick P. Olcott and others, a committee, parties of the second part to a certain agreement dated November 1st, 1894, made with The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and the said Receivers, pursuant to the order of this court made herein October 29th, 1894, or the successors or assigns of the said committee, shall have

been fully repaid all moneys by them advanced for the purchase of coupons and interest upon General Mortgage bonds, with interest and commissions as provided in said agreement, the said committee or its successors or assigns, holders of such coupons or claims for interest, shall retain and preserve, and may assert against the proceeds of the mortgaged premises so sold as aforesaid all rights and liens in respect of such coupons and interest claims under the provisions of General Mortgage or of said agreement of November 1st, 1894, anything in said decree of May 1st, 1896, or in any proceedings subsequent thereto or in this decree to the contrary notwithstanding.

It is further ordered and decreed, That any and every obligation on account of their purchase may, by the said purchasers, be transferred to any corporation by them adopted to take over property of the said The Philadelphia and Reading Railroad Company, and upon such transfer to and acceptance thereof by such corporation the purchasers shall be discharged from all obligation or liability on account of such purchase, or under the provisions of the said decree of May 1st, 1896, or of this decree.

(Signed) M. W. ACHESON,
Circuit Judge.

OCTOBER 3d, 1896.

DEED.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES, AS TRUSTEE,

TO

CHARLES H. COSTER AND FRANCIS LYNDE STETSON.

Dated October 23d, 1896.

AN INDENTURE, Made this twenty-third day of October, in the year one thousand eight hundred and ninety-six, between *The Pennsylvania Company for Insurances on Lives and Granting Annuities*, as trustee, as hereinafter described, party of the first part, and *Charles Henry Coster* and *Francis Lynde Stetson*, both of the city, county and State of New York, as joint tenants, and not as tenants in common, parties of the second part.

WHEREAS, Upon or about the third day of January, 1888, in pursuance of powers duly conferred by its stockholders and it managers, The Philadelphia and Reading Railroad Company, a corporation duly created by and existing under the laws of the State of Pennsylvania, duly made, executed and delivered to The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, its certain mortgage or deed of trust, called the General Mortgage, bearing date the third day of January, 1888, and thereby conveyed to said The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, and to its successor or successors in the trust, all the railroad of said The Philadelphia and Reading Railroad Company, and other property, railroads and franchises in said General Mortgage more specifically described;

AND WHEREAS, Upon or about the same day The Philadelphia and Reading Coal and Iron Company, a corpora-

tion also created by and existing under the laws of the State of Pennsylvania, for the better securing of the payment of the principal and interest of the bonds of The Philadelphia and Reading Railroad Company secured by said General Mortgage did, in pursuance of resolutions duly adopted by its stockholders and by its board of directors, join in said General Mortgage, and did thereby convey to The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, all the coal lands, coal leases, iron-ore lands, furnace properties and other real estate in the said General Mortgage more specifically described, which mortgage was duly recorded in the proper offices;

And Whereas, The Philadelphia and Reading Railroad Company having made default in the payment of interest which became due on the bonds secured by said General Mortgage, such proceedings were had in a certain cause pending in the Circuit Court of the United States for the Eastern District of Pennsylvania, wherein The Pennsylvania Company for Insurances on Lives and Granting Annuities was complainant, and The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and others were defendants, that a certain decree of foreclosure and sale was, on the first day of May, 1896, entered in said court, wherein and whereby it was adjudged and decreed that The Philadelphia and Reading Railroad Company pay or cause to be paid, within twenty days after the entry of said decree, certain amounts therein found to be due under said General Mortgage, and that in default of such payment by said defendant The Philadelphia and Reading Railroad Company, or by any one claiming under it, or by any one for its account, or of payment by The Philadelphia and Reading Coal and Iron Company, or by any one claiming under it, or by any one for its account, the property, premises and franchises of every description described in said General Mortgage, or by said decree adjudged to have become subject thereto

(except the property sold since the date of said mortgage under the powers therein reserved), should be sold as provided in said decree;

And Whereas, Neither The Philadelphia and Reading Railroad Company nor The Philadelphia and Reading Coal and Iron Company, nor any one claiming under them or either of them, nor any one for the account of them or either of them, made payment of the said sums or any part thereof within twenty days after the entry of such decree;

And Whereas, In and by said decree it was provided and directed that the sale therein provided for might and should be made by The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under the said General Mortgage, and that said trustee, on an order confirming such sale, and upon payment or settlement of the purchase price bid, as in said decree provided, should grant and convey the property sold to the purchaser or purchasers, freed from all and every the trusts by the General Mortgage created, and without liability on the part of such purchaser or purchasers to see to the application of the purchase money, and should execute and deliver a proper deed or deeds of conveyance thereof;

And Whereas, The party of the first part hereto, as trustee, and in pursuance of such decree, on the twenty-third day of September, 1896, at the place in said decree specified, to wit, upon the premises sold, at the old station of The Philadelpha and Reading Railroad Company, on Callowhill Street between Thirteenth Street and Broad Street, in the city of Philadelphia, in the State of Pennsylvania, did duly sell, at public auction, to the said Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, the parties of the second part hereto, they being the highest and best bidders at such sale, all and singular the premises

hereinafter described, the same being the first parcel, the second parcel and the third parcel in said decree mentioned and directed to be sold, at and for the sum of $7,500,000 for the first parcel, $7,500,000 for the second parcel and $1,000,000 for the third parcel, due notice of the time and place of such sale having been given pursuant to said decree and according to law, and the said decree having been complied with in all things relating to the said sale;

And Whereas, Thereupon the said party of the first part, trustee as aforesaid, upon September 23d, 1896, did duly make and file its report of the said sale to the said Circuit Court of the United States for the Eastern District of Pennsylvania, which said report and the sale therein reported, upon due notice to all parties, were by decree of the said court duly confirmed upon October 3d, 1896;

And Whereas, In and by said last-mentioned decree confirming said sale the party of the first part, as such trustee, was ordered and directed to sign, seal, execute and deliver a deed or deeds of conveyance to the said Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, the parties of the second part hereto, purchasers as aforesaid, conveying to them all and singular the railroads, franchises, stocks, bonds and other property hereinafter described, upon payment or settlement by them of the purchase price bid, as provided in said decree;

And Whereas, The form of this deed was submitted to the said court and filed, and was approved in and by said decree confirming said sale;

Now, Therefore, this Indenture Witnesseth, That the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, party of the first part to these presents, as trustee under the said General Mortgage, and in pursuance of the said decree, and in the exercise of all powers thereof and thereunder or in said Gen-

eral Mortgage contained, and in order to carry into effect the sale by it made as aforesaid to the parties of the second part, and in consideration of the premises and of the sums so as aforesaid paid or provided by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, alien, release, convey and confirm, unto the said Charles H. Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, parties of the second part hereto, and to the survivor of them, and to the heirs and assigns of the survivor, forever:—

All and singular the entire mortgaged and pledged property of every description of The Philadelphia and Reading Railroad Company, including all property and credits acquired by the Receivers thereof from the operation thereof, and the entire mortgaged and pledged property of every description of The Philadelphia and Reading Coal and Iron Company, including all property and credits acquired by the Receivers thereof from the operation thereof, and the entire property in said General Mortgage pledged to the trustees thereunder, The Pennsylvania Company for Insurances on Lives and Granting Annuities, by the reconstruction trustees, as set forth in said General Mortgage, severally and respectively in each case as a whole, and as directed in said decree, and therein and thereby authorized and provided to be sold as the first parcel, the second parcel and the third parcel therein mentioned, the same being described as follows:—

THE FIRST PARCEL.

THE FOLLOWING PROPERTY OF THE PHILADELPHIA AND READING RAILROAD COMPANY:—

I.

The following lines of railroads and other property of said Railroad Company, to wit:—

The Main Line, the Lebanon Valley Branch, the Lebanon and Tremont Branch, the Mahanoy and Shamokin Branch, the Mount Carbon Branch, the Schuylkill and Susquehanna Branch, the Port Kennedy Branch, the West Reading Branch, the Moselem Branch;

The leasehold interest in the Philadelphia, Germantown and Norristown Railroad;

The leasehold interest in the Chestnut Hill Railroad;

The leasehold interest in the Plymouth Railroad;

The leasehold interest in the Colebrookdale Railroad;

The leasehold interest in the East Pennsylvania Railroad;

The leasehold interest in the East Mahanoy Railroad Company and the Little Schuylkill Navigation Railroad and Coal Company;

The leasehold interest in the Schuylkill Valley Navigation and Railroad Company;

The leasehold interest in the Mill Creek and Mine Hill Navigation and Railroad Company;

The leasehold interest in the Mount Carbon and Port Carbon Railroad;

The leasehold interest in the Mine Hill and Schuylkill Haven Railroad;

The leasehold interest in the canal and navigation works of the president, managers and company of the Schuylkill Navigation Company;

The leasehold interest in the canal and navigation works of the Susquehanna Canal Company;

The leasehold interest in the railroad of the Catawissa Railroad Company;

The leasehold interest in the railroad of the Pickering Valley Railroad Company;

The leasehold interest in the railroad known as the Philadelphia and Chester Branch;

The leasehold interest in the main line of the railroad of the North Pennsylvania Railroad Company, and the branches thereof known as the Delaware River Branch and the Doylestown Branch;

The leasehold interest in the railroad of the Delaware

and Bound Brook Railroad Company, together with the branch known as the Trenton Branch;

The leasehold interest in the Schuylkill and Lehigh Railroad;

The leasehold interest in the Shamokin, Sunbury and Lewisburg Railroad;

And all real estate of said Railroad Company wherever situated owned by it at the date of the execution of said General Mortgage or by it thereafter in any manner acquired, or held for its benefit or in trust for it; all other railroads then owned or thereafter constructed or acquired by purchase, merger, or in any manner whatever by said Railroad Company; all other leasehold estates in any other railroads at any time after the execution of said General Mortgage acquired by lease, assignment, or in any manner whatsoever by said Railroad Company; all branches, extensions, sidings and turnouts of all the said railroads and each of them; all advances made by said Railroad Company in the operation by it of the leased railroads forming part of the mortgaged property so far as the same are repayable, and all right and claim to the repayment thereof; all lands, rights of way, rails, bridges, wharves, fences, workshops, machinery, stations, offices, depots, depot grounds, engine houses, buildings, improvements, tenements and hereditaments; all locomotives, tenders, passenger cars, baggage cars, freight cars, coal cars and all other engines, cars, carriages and rolling stock, tools, implements, materials and supplies; and all steam colliers, ships, vessels, canal boats and barges owned by said Railroad Company at the date of the execution of said General Mortgage, or by it thereafter at any time acquired; all and singular the tolls, rents, revenues, issues, profits and income of the Railroad Company derived from said railroads, canals and other property; all corporate and other rights, privileges, appurtenances and franchises of said Railroad Company, or connected with or relating to said mortgaged premises then owned by it or thereafter acquired; all the streets, ways, alleys, passages, waters, water courses, easements, rights,

liberties, privileges, hereditaments and appurtenances whatsoever unto any of said mortgaged premises and estates belonging or appertaining; and all the estate, right, title, interest, property, claim and demand of every nature and kind whatsoever of the Railroad Company, as well at law as in equity, of, in and to the same and every part and parcel thereof;

Excepting, however, any property heretofore sold or conveyed by said railroad company under the powers reserved in said General Mortgage, but including all cash and securities by the trustee received and held in consideration of its release of any such property.

II.

One hundred and sixty thousand shares of the par value of fifty dollars each in the capital stock of The Philadelphia and Reading Coal and Iron Company.

III.

All shares and bonds of lines leased or controlled by The Philadelphia and Reading Railroad Company deposited with the undersigned as trustee under the said General Mortgage of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, dated January 3d, 1888, for which General Mortgage bonds have, under the terms of said General Mortgage, been issued, including the following:—

(1.) $192,340.47 of the mortgage loans of the Schuylkill Navigation Company, commonly known as Loans of 1872–1897.

(2.) $91,317.67 of the mortgage loans of the Schuylkill Navigation Company, commonly known as Loans of 1882–1907.

(3.) $119,000 of the loans of the Schuylkill Navigation Company, commonly known as the Loans of 1895.

(4.) $13,500 of the loan of the Schuylkill Navigation Company, commonly known as the Improvement Loan.

(5.) $71,150 of the boat and car loans of the Schuylkill Navigation Company.

(6.) $64,300 in the preferred stock of the Schuylkill Navigation Company.

(7.) $20,800 in the common stock of the Schuylkill Navigation Company.

(8.) The following securities and stocks of the Susquehanna Canal Company:—

First mortgage preferred	$227,000 00
First mortgage priority	96,810 58
Third mortgage six per cent	1,316,376 52
Fourth mortgage seven per cent	238,000 00
Stock	1,970,973 84

(9.) $239,300 in the first mortgage loan of the Pickering Valley Railroad Company.

(10.) $504,300 in the mortgage bonds of the Colebrookdale Railroad Company.

(11.) The following securities of the Catawissa Railroad Company:—

10 per cent. chattel mortgage bonds, 1868-1888	$98,450
5 per cent. chattel mortgage bonds, 1880	24,500
7 per cent. debenture bonds, 1917	62,000

Said first parcel being, however, subject, and reference is hereby made, to the terms, conditions, reservations and obligations in the said decree contained applicable to the said first parcel, and especially to the provision in said decrees that all claims and equities of the Philadelphia, Reading and New England Railroad Company and the holders of its bonds and shares be reserved for further consideration;

And subject also to the following prior liens and incumbrances, so far as they respectively attach to the premises thereby conveyed or any part thereof, viz.:—

Certain mortgages created by The Philadelphia and Reading Railroad Company to secure bonds, of which, at the execution of the said General Mortgage, there were outstanding the following amounts, to wit:—

6 per cent. £ mortgage loan, 1843-1910, coupon	$967,200 00
6 per cent. $ mortgage loan, 1843-1910, coupon	545,500 00
6 per cent. $ mortgage loan, 1844-80, coupon	1,000 00
6 per cent. $ mortgage loan, 1844-1910, coupon	795,000 00

6 per cent. $ mortgage loan, 1848-1910, coupon	$92,000 00
6 per cent. $ mortgage loan, 1849-1910, coupon	67,000 00
6 per cent. $ mortgage, convertible loan, 1857-86, coupon	79,000 00
5 per cent. $ mortgage, convertible loan, 1868-1893-1933	2,700,000 00
	$5,246,700 00

Consolidated mortgage loan, 1871–1911:

6 per cent. gold, $ or £, coupon	$6,999,000 00
6 per cent. gold, $, coupon	305,000 00
6 per cent. gold, $, registered	858,000 00
7 per cent. gold, $, registered	3,339,000 00
7 per cent. gold, $, coupon	7,310,000 00
	$18,811,000 00

Improvement mortgage loan, 1873–97:

6 per cent. gold, $ or £, coupon	$9,364,000 00

Income mortgage loan, 1876–96:

7 per cent., $	1,000 00

Consolidated mortgage loan, 1882–1922, first series:

5 per cent. gold, $	5,767,042 00

Consolidated mortgage loan, 1883–1933, second series:

5 per cent. gold, $	1,535 00
	$15,133,577 00

Bonds and mortgages outstanding at or subsequent to 3d January, 1888:

(*a*) On real estate and ground rents	$1,609,563 51	
(*b*) On Delaware Terminals	1,922,000 00	
		3,598,896 85
		$18,732,473 85
		$42,790,173 85

THE SECOND PARCEL.

THE FOLLOWING PROPERTY OF THE PHILADELPHIA AND READING COAL AND IRON COMPANY:—

I.

The following coal lands, coal leases, iron-ore lands, furnace properties and other real estate:—

COAL LANDS.

No. 1. Trevorton estate.
2. Associate lands.
3. Zimmerman and Heller tracts.
4. John Boyd tract.
5. Shamokin and Bear Valley tracts.
6. M. E. Leverson tract.
7. William M. Rockafeller tract.
8. Big Mountain lands.
9. Wetherill, Gray, Cleaver, and Brady tracts.
10. Preston Miller survey.
11. Bittenbender lands.
12. George Schall tract.
13. McIntyre lands.
14. William Sheed tract.
15. Helfenstein lands.
16. Locust Mountain Summit Improvement Company lands.
17. Samuel Morgan tract.
18. Mount Carmel Coal and Iron Company lands.
19. Mount Carmel and Locust Mountain Coal Company lands.
20. Locust Dale estate.
21. Ashland estate.
22. Fountain Springs tract.
23. Necho Allen tract.
24. Locust Mountain tract.
25. William Jones tract.
26. Philadelphia and Mahanoy lands.
27. James McNeal tract.
28. Taggart tract.
29. Neifert tract.
30. Sheafer tract.
31. Kear and Patterson lands.
32. Ely and Richle tract.
33. Andrew Love tract.
34. Summit lands.
35. Tamaqua lands.
36. Coal Hill estate.
37. Wood and Abbot tract.
38. Guiterman or Tuscarora tract.
39. Glentworth tract.
40. Eagle Hill tract.
41. Mary Patterson tract.
42. Valley Furnace lands.
43. Lewis tracts.
44. Ravensdale tract.
45. Dilcamp tract.

46. Lee lands.
47. Repp and Keim tracts.
48. Repp's heirs' tract.
49. Saw Mill tract.
50. St. Clair tract.
51. Ellmaker tract.
52. Flowery Field tract.
53. West Flowery Field tract.
54. Mount Laffee tract.
55. Oak Hill tract.
56. Duncan lands.
57. Houston or Russell tract.
58. Coit tract.
59. Samuel Heffner tract.
60. Minersville tract.
61. Minersville Coal Reserve.
62. Carey and Hart tract.
63. Jemmy Laing tract.
64. Diamond tract.
65. Gettle and Wagner lands.
66. Manhattan lands.
67. Catharine Groh tract.
68. Hammer and Hoy tract.
69. Phœnix Park tract.
70. Hughes and Langton tract.
71. Llewellyn tract.
72. Salem lands.
73. Little Klauser tract.
74. Reed tract.
75. Hartman and Myer tract.
76. Little Schall tract.
77. Big Schall tract.
78. Gunkel and Branham tracts.
79. Farquhar lands.
80. Green lands.
81. Swatara lands.
82. Schuylkill and Dauphin Improvement and Railroad Company lands.
83. Tower Meconkey *et al.* lands.
84. Francis Spatzer tract.
85. One-eighth of Joseph S. Silver tract.
86. Henry Houtz tract.
87. Alexander Klinger tract.
88. Philip Kunzleman tract.
89. Forbes and Delano lands.
90. Leonard Illig tract.
91. Peter Levengood tract.
92. Munson and Williams lands.
93. Keffer tract.
94. Fishing Creek tract (north).
95. Fishing Creek tract (south).
96. Michael Seltzer tract.
97. Schuylkill and Susquehanna lands.
98. Peter Kessler tract.

Coal Leases.

99. Lease from the Preston Coal and Improvement Company.
100. Lease from the Delaware Coal Company.

101. Lease from the Mammoth Vein Coal and Iron Company.
102. Lease from the Tremont Coal Company.
103. Lease of Green tract.
104. Lease of Henry Miller and Sarah Moore tracts.
105. Lease of Conrad Mertz tract.
106. Lease of Hepburn tract.
107. Lease of one-fourth of Bernard Hubley tract.
108. Lease of part of Andrew Lytle tract.
109. Lease of one-eighth of the Alexander Klinger tract.
110. Lease of one-half of Kinnear, Meyer, and Spaetzer tracts.
111. Lease of Nancy Kinnear tract.
112. Lease of Flowery Field, Saw Mill and Ellmaker tracts and Lee lands.
113. Lease of West Bear Ridge Colliery.
114. Lease of East Bear Ridge Colliery.
115. Lease of Henry Clay Colliery.
116. Lease of Peerless Colliery.
117. Lease of Buck Ridge Colliery.
118. Lease of Girard, Mammoth and Cuyler Collieries.
119. Lease of Union, or North Ashland, Colliery.
120. Lease of Hammond and Conner Collieries.
121. Lease of Girard Colliery.

Iron-Ore Lands.

122. Putnam Valley, New York, lands.
123. Putnam County, New York, ore lands.
124. Nelson County, Virginia, iron-ore lands.
125. Nelson and Amherst Counties, Virginia, iron-ore lands.
126. Albermarle County, Virginia, iron-ore lands.
127. Seasholtzville, Pa., land.
128. Big Pond, Pa., estate.
129. Boiling Spring lease, Pennsylvania.
130. Heim and Vanasdlen lands.

Furnace Properties.

131. Bechtelsville.
132. Swede.
133. Kutztown.
134. East Penn.
135. Emaus.
136. St. Clair.
137. Ringgold.
138. Monocacy.
139. Port Carbon Furnace and Rolling Mill.
140. Powhatan Furnace, Virginia.

Other Real Estate.

141. Office building and lot, Pottsville.
142. Acre lot, Branch Township.
143. Tower City lands.
144. Lot of ground, Chestnut Street, Reading.
146. Adams Street Depot, Brooklyn, N. Y.
147. Twenty-ninth Street Depot (leasehold), New York City
148. New Bedford Depot, Massachusetts.

149. Newburyport Depot, Massachusetts.
150. Salem Depot (leasehold), Massachusetts.
151. Pottsville shops.
152. Bellefonte lots.
153. Surface—Town of Locust Dale.
154. Surface—Ashland.
155. Hegins Township lot.
156. Port Carbon lots.
157. Berks County lands.
158. Lot at Preston.
159. Various Schuylkill County lands.
160. Cameron Township lands.

And all other real estate of said Coal and Iron Company wherever situated by it owned at the date of the execution of said General Mortgage, or thereafter in any manner acquired or held for its benefit or in trust for it; all railroads and all branches, extensions, sidings and turnouts of any railroad then belonging to said Coal and Iron Company, or thereafter constructed, or in any manner acquired by it; all lands, coal leases, iron-ore leases, mines, collieries, breakers, engines, workshops, machinery, offices, buildings, improvements, tenements and hereditaments then owned by it or by it thereafter in any manner acquired or for its benefit or in trust for it; all yards, depots and wharves, including all right, title and interest of the said Philadelphia and Reading Coal and Iron Company or the Receivers thereof in the several yards, depots and wharves held under lease respectively from the several following lessors: Estate James H. Rogers, Milwaukee; estate J. H. & H. J. Pauley, Milwaukee; Metropolitan Trust Company, Minneapolis; St. Anthony Falls Water Power Company, George L. & M. S. Stabler, F. C. Griswold, Minneapolis; C. E. Henderson and wife and W. C. Sargent, Duluth; Dennis Ryan, estate William Lindeke, Great Northern Railway Company, St. Paul; John Plankinton estate, Milwaukee; Baltimore and Ohio Railroad Company; W. B. Howard and wife; Israel Gauthier; W. S. North; Illinois Central Railroad Company; Culberson & Blair Packing and Provision Company; Shephard Brooks, Chicago; J. W. Whitney and C. W. Fisk and Samuel Wilder, Rochester; Eastern Railway Company, West Superior; Boston and Maine

Railroad Company, Mystic Wharf, Boston; and all locomotives, tenders, coal cars, carriages and all other engines, cars, rolling stock, tools, implements, horses, mules and materials; and all corporate and other rights, privileges, appurtenances and franchises of said Coal and Iron Company, or connected with or relating to the said lands, coal or iron mines, railroad or other premises, or any of them, owned by said Coal and Iron Company at the date of the execution of said General Mortgage, or by it at any time thereafter constructed or acquired; all and singular the tolls, rents, revenues, issues, profits and income of the Coal and Iron Company derived from said railroad, canals, coal or iron mines, and other property; and all streets, ways, alleys, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatever unto any of the said mortgaged premises and estates belonging or appertaining; and all the estate, right, title, interest, property, claim and demand of every nature and kind whatsoever of the Coal and Iron Company, as well at law as in equity, of, in and to the same and every part and parcel thereof, but not the franchise of the said The Philadelphia and Reading Coal and Iron Company to be a corporation with all the rights, privileges and franchises on it conferred by law, all of which, notwithstanding these proceedings and this conveyance, are by it retained and preserved unimpaired.

Excepting, however, any property heretofore conveyed or transferred under the powers reserved in said General Mortgage, but including all cash and securities by the trustee received and held in consideration of its release of any such property.

II.

The following shares of the capital stock of other corporations owned by said Coal and Iron Company, but subject to a prior pledge thereof by it to The Philadelphia and Reading Railroad Company under a mortgage dated July 1st, 1874, viz.:—

Name of Company.	No. of Shares.
Preston Coal and Improvement Company	56,683
Fulton Coal Company	63,537
Locust Gap Improvement Company	50,522
Tremont Coal Company	118,354
Mammoth Vein Coal and Iron Company	59,727
Delaware Coal Company	4,716

Said second parcel being, however, subject, and reference is hereby made, to the terms, conditions, reservations and obligations in the said decrees contained applicable to the said second parcel:

And subject, also, so far as practicable to the same or to parts thereof, to certain mortgages or liens given or created by The Philadelphia and Reading Coal and Iron Company to secure obligations to an aggregate principal amount of $12,500,000, as shown by the report of the Special Master filed herein.

THE THIRD PARCEL.

The following securities and stocks pledged as security for said General Mortgage by certain Reconstruction Trustees of The Philadelphia and Reading Railroad Company:—

I.

General Mortgage bonds of The Philadelphia and Reading Railroad Company, secured by a mortgage of said Railroad Company, dated July 1st, 1874, to the Fidelity Insurance, Trust and Safe Deposit Company, trustee, $24,457,000.

Income mortgage bonds of The Philadelphia and Reading Railroad Company, secured by a mortgage of said Railroad Company, dated December 1st, 1876, to Edwin M. Lewis, trustee, $8,493,810.

First series five per cent. consolidated mortgage bonds of The Philadelphia and Reading Railroad Company,

secured by mortgage of said Railroad Company, dated August 26th, 1882, to The Pennsylvania Company for Insurances on Lives and Granting Annuities, of the city of Philadelphia, trustee, $184,606.

Second series five per cent. consolidated mortgage bonds of The Philadelphia and Reading Railroad Company, secured by said mortgage, dated August 26th, 1882, $6,131,404.

II.

(1.) $1,493,249.73 of the mortgage loans of the Schuylkill Navigation Company, commonly known as the Loans of 1872-1897.

(2.) $3,849,828.67 of the mortgage loans of the Schuylkill Navigation Company, commonly known as the Loans of 1882-1907.

(3.) $1,062,000 of the loan of the Schuylkill Navigation Company, commonly known as the Loan of 1895.

(4.) $214,500 of the loan of the Schuylkill Navigation Company, commonly known as the Improvement Loan.

(5.) $669,550 of the boat and car loan of the Schuylkill Navigation Company, due in 1913.

(6.) $579,350 of the boat and car loan of the Schuylkill Navigation Company, due in 1915.

(7.) 64,580 shares of the preferred stock of the Schuylkill Navigation Company.

(8.) 12,554 shares of the common stock of the Schuylkill Navigation Company.

Said third parcel, however, is subject, and reference is hereby made, to the terms, conditions, reservations and obligations in the said decrees applicable to the said third parcel.

Together with all property, real and personal, of every character and description, or any beneficial interest therein, acquired by the Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company in the course of the operation and management of either of said two parcels or pertaining thereto, or to which, or to any bene-

ficial interest in which, they are or may become entitled, including all income, proceeds of income, bills and accounts receivable, cash, materials, supplies and other property, received by said Receivers in the management or operation of such parcel or pertaining thereto, and any and all property appurtenant to such parcel or pertaining thereto and acquired for use in connection with or for the purposes of such parcel or the business of said Railroad Company, or of said Coal and Iron Company in connection therewith, and vested in or standing in the name of the said Receivers, or to which said Receivers in any manner shall have acquired title, at the time of delivery to the purchasers of such parcel; all equipment and all coal in possession of said Receivers at the time of the delivery of such parcel to be delivered as part of and in connection with the parcel in respect of which it shall have been acquired or received by said Receivers.

Excepting, however, all such leases and contracts sold with the said first parcel or the said second parcel, as, within ninety days after the completion of the sale and the delivery of this deed, the parties of the second part shall elect not to assume or adopt.

To Have and to Hold, all and singular, the abovementioned railroads, franchises, stocks, bonds and other property hereby conveyed (other than the parcels thereof which within ninety days from the date of the delivery of this deed the parties of the second part may elect not to assume or adopt), unto the said parties of the second part, as joint tenants, and not as tenants in common, and to the survivor of them, and to the heirs and assigns of such survivor, forever.

Subject, however, to the express condition that to the extent that the assets or proceeds of assets in the Receivers' hands shall be insufficient, the parties of the second part, or their successors or assigns, shall pay, satisfy and discharge (*a*) any unpaid compensation which shall be allowed by the court to the Receivers; (*b*) any indebtedness, obligation or liabilities which shall have

been contracted or incurred by the Receivers before they shall have delivered possession of the property sold, whether or not represented by certificates; (*c*) and also any indebtedness or liability contracted or incurred by said defendants The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, or either of them, in the operation of the mortgaged property prior to the appointment of the Receivers which is prior in lien or superior in equity to said General Mortgage, and which shall not be paid or satisfied out of the income of the property in the hands of the Receivers or out of the assets or out of the proceeds of assets in their hands, upon the decree of the United States Circuit Court for the Eastern District of Pennsylvania, adjudging the same to be prior in lien or superior in equity to said General Mortgage and directing payment thereof; all payments for any such purpose made by the purchasers in advance of the final accounting and discharge of the Receivers to be treated as advances and subject to final adjustment on such accounting:

Provided, however, That upon publication by the Special Master, when ordered by said court, as provided in said decree, of a notice requiring holders of any claim to present the same for allowance, any such claims which shall not be so presented or filed within the period of six months after the first publication of such notice shall not be enforceable against the property sold or against the purchasers, their successors or assigns.

In order to facilitate the recording hereof, six originals of this deed have been executed, acknowledged and delivered by the party of the first part, all or any one or more of which may be recorded, and each of which, when executed, acknowledged and delivered, shall be deemed an original, and all collectively but one instrument.

In Witness Whereof, Said The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee as aforesaid, has caused these presents to be

signed by its president, and its corporate seal to be hereunto affixed, the day and year first above written.

THE PENNSYLVANIA COMPANY FOR INSURANCES ON LIVES AND GRANTING ANNUITIES, TRUSTEE,
By
N. H. PAUL,
President.

[L.S.]

Attest:

JOHN J. R. CRAVEN,
Secretary.

In presence of:

JOHN J. R. CRAVEN,
THOS. CRAVEN.

COMMONWEALTH OF PENNSYLVANIA,
CITY OF PHILADELPHIA, } *ss.*

On the twenty-third day of October, A. D. 1896, before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, personally appeared John J. R. Craven, secretary of the above-named The Pennsylvania Company for Insurances on Lives and Granting Annuities (he being one of the subscribing witnesses to the sealing and delivery of the above indenture), who, being by me duly sworn according to law, did depose and say that he was present at the execution of said indenture, and did see Henry N. Paul, the president of said corporation, affix the common or corporate seal of the said The Pennsylvania Company for Insurances on Lives and Granting Annuities thereto, and subscribe his name as president in attestation thereof; that the seal so affixed is the common or corporate seal of the said corporation, and that the said seal was so affixed and the said indenture was duly sealed and delivered by the said president as the act and deed of the said corporation, for the uses and purposes therein mentioned, in pursuance of a resolution of the board of directors, duly passed at a meeting thereof held the nineteenth day of October, A. D. 1896; that he saw Thomas Craven, the other subscribing witness, sign his name to the said indenture; and that the name of this deponent, subscribed to the said indenture as secretary of the said company, in attestation of the due execution and delivery of the said indenture, and also subscribed as a witness to the sealing and delivery thereof, are of his, this deponent's, own handwriting.

JOHN J. R. CRAVEN.

Sworn and subscribed before me. Witness my hand and notarial seal, the day and year aforesaid.

GEORGE HOUSE,
Notary Public.

[L.S.]

DEED.

THE PHILADELPHIA AND READING RAILROAD COMPANY

TO

CHARLES H. COSTER AND FRANCIS LYNDE STETSON.

October 23d, 1896.

THIS INDENTURE, Made this twenty-third day of October, in the year one thousand eight hundred and ninety-six, between *The Philadelphia and Reading Railroad Company*, party of the first part, and *Charles Henry Coster* and *Francis Lynde Stetson*, both of the city, county and State of New York, as joint tenants, and not as tenants in common, parties of the second part;

WHEREAS, The party of the first part duly made, executed and delivered to The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, its certain mortgage or deed of trust called the "General Mortgage," bearing date the third day of January, 1888, and thereby conveyed to said The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, and to its successors or successor in the trust, all the railroad of the said Philadelphia and Reading Railroad Company and other property, railroads and franchises in said General Mortgage specifically described;

AND WHEREAS, The party of the first part having made default in the payment of the interest which became due on the bonds secured by said General Mortgage, such proceedings were had in a certain cause pending in the Circuit Court of the United States for the Eastern District of Pennsylvania, wherein The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, was complainant, and The Philadelphia and

Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and others were defendants, that on the first day of May, 1896, a certain decree of foreclosure and sale was entered in said court, and by virtue of the powers given in the mortgage and said decree of foreclosure and sale, as by reference thereto will fully and at large appear, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, on the twenty-third day of September, 1896, at the place in said decree specified, to wit, upon the premises sold, at the old station of The Philadelphia and Reading Railroad Company, on Callowhill Street between Thirteenth Street and Broad Street, in the city of Philadelphia and in the State of Pennsylvania, did duly sell at public auction to the said Charles Henry Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, the parties of the second part hereto, all and singular the railroads, property, premises and franchises of every description described in said General Mortgage, or by the decree of the court in the aforesaid suit adjudged to have become subject thereto, excepting therefrom only the property sold since the date of the said mortgage under the powers therein reserved, and including the property and estate of The Philadelphia and Reading Coal and Iron Company in said mortgage described, at and for the sum of $16,000,000, which said sale was duly reported to the court, and after full hearing and notice to all parties, was by the decree of the said court duly and finally confirmed upon the third day of October, 1896;

And Whereas, The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee as aforesaid, in execution of the powers by said mortgage conferred and in compliance with the terms of the decree of said court, has made, signed, sealed, executed and delivered a deed of conveyance, bearing even date herewith, to the said Charles Henry Coster and Francis Lynde Stetson, parties of the second part, as joint tenants, and

not as tenants in common, conveying to them all and singular the railroads, franchises, stocks, bonds and other property in said deed fully described;

And Whereas, By the terms of said decree the party of the first part was directed, upon the request of the purchasers, to make and execute, acknowledge and deliver to the purchasers such deeds of conveyance, transfers, and releases by way of further assurance and confirmation of title to such purchasers or their assigns as might be necessary fully and completely to transfer to and invest in the said purchasers, parties of the second part, and their assigns the full legal and equitable title to all the railroads, property and franchises sold, or intended to be sold, by the said trustee in the foreclosure sale hereinbefore referred to;

And Whereas, At a meeting of the board of managers of The Philadelphia and Reading Railroad Company, party of the first part, duly convened and held on the fourteenth day of October, 1896, the following preambles and resolution were adopted:—

"Whereas, The Circuit Court of the United States, Eastern District of Pennsylvania, in the suit of The Pennsylvania Company for Insurances on Lives and Granting Annuities *vs.* The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and others, No. 9, April Sessions, 1895, did, on the third day of October, 1896, order and decree that the sale made by The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee of the mortgaged premises and the property covered by said order of sale, to Charles H. Coster and Francis Lynde Stetson be confirmed, and that the trustee be authorized to sign, seal, execute and deliver a deed or deeds of conveyance to the said Charles H. Coster and Francis Lynde Stetson of the property therein specified; and did further order and decree 'That by way of further assurance and confirmation of title to such purchasers or their assigns,

the said Philadelphia and Reading Railroad Company and the said Philadelphia and Reading Coal and Iron Company, mortgagors, each by its proper officers and under its corporate seal, shall, upon request of said purchasers or their assigns, join in said deeds to be executed by the trustee, or if so requested, shall sign, seal, execute, acknowledge and deliver to such purchasers or to their assigns separate deeds of conveyance, transfer, release and further assurance of all the railroad, property and franchises sold under the decree of this court, so as fully and completely to transfer to and invest in the said purchasers and their assigns the full legal and equitable title to all such railroads, property and franchises hereby sold or intended to be sold.'

"AND WHEREAS, Under the provisions and intention of the said General Mortgage it is the duty of this company to make, execute and deliver to the purchasers thereunder proper deeds of confirmation and further assurance;

"Therefore be it

"*Resolved*, That the proper officers of the company be and they are hereby authorized and instructed to make, execute and deliver, under the corporate seal, all such deed or deeds of conveyance, bills of sale and other proper assurances in writing as they shall be advised by counsel are proper to carry into effect the purposes set forth in the foregoing preambles, and that they be and are hereby authorized and instructed, from time to time, to make and deliver, under the corporate seal, and to cause to be executed by any trustee or depository holding the same in any form of trust, all such proper instruments of writing as they shall be advised by counsel are required to vest in the purchasers or the successor company to be organized by them, or to which they shall assign or convey the property purchased, or to their appointee, as the case may be, the interest of this company and of such trustee in any property so held in trust for this company or for its use and benefit."

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That the said The Philadelphia and Reading Railroad Company, party of the first part, in pursuance of its obligation under said General Mortgage and in pursuance of the said decree of the said Circuit Court of the United States, and in exercise of all its powers, and in consideration of the premises and of the sum of one dollar paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, aliened, demised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, assign, alien, release, convey and confirm unto the said Charles Henry Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, parties of the second part, and to the survivor of them and to the heirs and assigns of the survivor, forever:

All and singular the right, title, estate, interest, claim and demand of The Philadelphia and Reading Railroad Company, of in and to all the railroads, equipment, appurtenances and franchises, the lands, premises, estates, property, stocks, securities, credits and interests of every kind mentioned and described, assigned, transferred and conveyed, or intended to be assigned, transferred and conveyed, by The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee, to Charles Henry Coster and Francis Lynde Stetson, by deed of even date herewith, and intended to be recorded, as by reference to said deed and conveyance will more fully and at large appear.

Together with all property, real and personal, of every character and description, and any and all beneficial interest therein, acquired by The Philadelphia and Reading Railroad Company or by the Receivers of The Philadelphia and Reading Railroad Company in the course of the operation and management of the same, and to which, or to any beneficial interest in which, the said Philadelphia and Reading Railroad Company are and may become entitled, including all income, proceeds of income, bills and accounts receivable, cash, materials and supplies and

other property rights, equities and equities of redemption in which The Philadelphia and Reading Railroad Company has or can have any interest whatever.

Excepting only such property as heretofore has been conveyed and transferred under the power reserved in any of the mortgages of the said Philadelphia and Reading Railroad Company or in pursuance of any power by it heretofore lawfully exercised.

To Have and to Hold, all and singular, the above-mentioned railroads, equipment, appurtenances and franchises, the lands, premises, estates, property, stocks, securities, credits and interests of every kind, including all those mentioned and described, assigned, transferred and conveyed or intended to be assigned, transferred and conveyed in the deed of conveyance by the said Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee, to Charles Henry Coster and Francis Lynde Stetson, as hereinbefore referred to, unto the said parties of the second part as joint tenants, and not as tenants in common, and to the survivor of them, and to the heirs and assigns of such survivor, forever:

Provided, however, That nothing herein contained shall modify the right of the parties of the second part to elect not to assume or adopt any leases or contracts of the party of the first part, as reserved in the decree of the Circuit Court of the United States and in the deed by the said trustee to the said parties of the second part.

In order to facilitate the recording hereof, six originals of this deed have been executed, acknowledged and delivered by the party of the first part, all or any one of which may be recorded, and which, when executed, acknowledged and delivered, shall be deemed an original, and all collectively but one instrument.

In Witness Whereof, The said The Philadelphia and Reading Railroad Company has caused these presents to be signed by its president and its corporate seal to be

hereunto affixed, duly attested by its secretary, the day and year first above written.

THE PHILADELPHIA AND READING RAILROAD COMPANY,
By
J. S. HARRIS,
President.

[L.S.]

Attest:
W. R. TAYLOR,
Secretary.

In the presence of:
W. G. BROWN,
C. K. KLINK.

CITY OF PHILADELPHIA, }
STATE OF PENNSYLVANIA, } *ss.*

BE IT REMEMBERED, That before me, the subscriber, a notary public in and for the said city, personally came and appeared William R. Taylor, secretary of the foregoing-named corporation, The Philadelphia and Reading Railroad Company, who, being duly sworn according to law, deposes and says that he was personally present at the execution of the foregoing indenture or mortgage, and saw Joseph S. Harris, president of the said corporation, affix the seal of the said company to the said indenture and deliver the same as the act and deed of the said company; and that the name of this deponent, subscribed to the said indenture as secretary of the said corporation, in attestation of the due execution and delivery of the said indenture, is of this deponent's own proper handwriting.

W. R. TAYLOR.

Sworn to and subscribed before me. Witness my hand and official seal, this twenty-third day of October, A. D. 1896.

C. K. KLINK,
Notary Public.

[L.S.]

DEED.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY TO CHARLES H. COSTER AND FRANCIS LYNDE STETSON, OCTOBER 23D, 1896.

THIS INDENTURE, Made this twenty-third day of October, in the year one thousand eight hundred and ninety-six, between *The Philadelphia and Reading Coal and Iron Company*, party of the first part, and *Charles Henry Coster and Francis Lynde Stetson*, both of the city, county and State of New York, as joint tenants, and not as tenants in common, parties of the second part;

WHEREAS, The party of the first part duly made, executed and delivered to The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, its certain mortgage or deed of trust called the "General Mortgage," bearing date the third day of January, 1888, and thereby conveyed to said The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, and to its successors or successor in the trust, all its coal lands, coal leases, iron-ore lands, furnace properties and other real estate, with the appurtenances, in said General Mortgage specifically described, to further secure the payment of certain bonds issued by The Philadelphia and Reading Railroad Company.

AND WHEREAS, The Philadelphia and Reading Railroad Company having made default in the payment of the interest which became due on the bonds secured by said General Mortgage, such proceedings were had in a certain cause pending in the Circuit Court of the United States for the Eastern District of Pennsylvania, wherein The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, was complainant, and The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and others were de-

fendants, that on the first day of May, 1896, a certain decree of foreclosure and sale was entered in said court; and by virtue of the powers given in the mortgage and said decree of foreclosure and sale, as by reference thereto will fully and at large appear, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, on the twenty-third day of September, 1896, at the place in said decree specified, to wit, at the old station of The Philadelphia and Reading Railroad Company, on Callowhill Street between Thirteenth Street and Broad Street, in the city of Philadelphia and in the State of Pennsylvania, did duly sell at public auction to the said Charles Henry Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, the parties of the second part hereto, all and singular the coal lands, coal leases, iron-ore lands, furnace properties, real estate and property of every description described in said General Mortgage, or by the decree of the court in the aforesaid suit adjudged to have become subject thereto, excepting therefrom only the property sold since the date of the said mortgage under the powers therein reserved and including the property, estate and franchises of every kind of The Philadelphia and Reading Railroad Company in said mortgage described, at and for the sum of sixteen millions of dollars, which said sale was duly reported to the court, and, after full hearing and notice to all parties, was by the decree of the said court duly and finally confirmed upon the third day of October, 1896;

And Whereas, The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee as aforesaid, in execution of the powers by said mortgage conferred, and in compliance with the terms of the decree of said court, has made, signed, sealed, executed and delivered a deed of conveyance, bearing even date herewith, to the said Charles Henry Coster and Francis Lynde Stetson, parties of the second part, as joint tenants, and not as tenants in common, conveying to them all and singular the coal lands, coal leases, iron-ore lands, furnace properties and other real estate, stocks, bonds and other property of the said The

Philadelphia and Reading Coal and Iron Company in said deed fully described;

And Whereas, By the terms of said decree the party of the first part was directed, upon the request of the purchasers, to make and execute, acknowledge and deliver to the purchasers such deeds of conveyance, transfers and releases by way of further assurance and confirmation of title to such purchasers or their assigns as might be necessary fully and completely to transfer to and invest in the said purchasers, parties of the second part, and their assigns the full legal and equitable title to all the coal lands, coal leases, iron-ore lands, furnace properties, real estate and property, real, personal and mixed, sold or intended to be sold by the said trustee in the foreclosure sale hereinbefore referred to;

And Whereas, At a meeting of the board of directors of The Philadelphia and Reading Coal and Iron Company, party of the first part, duly convened and held on the twenty-third day of October, 1896, the following preambles and resolution were adopted:—

"Whereas, The Circuit Court of the United States, Eastern District of Pennsylvania, in the suit of The Pennsylvania Company for Insurances on Lives and Granting Annuities *vs.* The Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company and others, No. 9, April Sessions, 1895, did on the third day of October, 1896, order and decree that the sale made by The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee of the mortgaged premises and the property covered by said order of sale, to Charles H. Coster and Francis Lynde Stetson, be confirmed, and that the trustee be authorized to sign, seal, execute and deliver a deed or deeds of conveyance to the said Charles H. Coster and Francis Lynde Stetson of the property therein specified; and did further order and decree 'That by way of further assurance and confirmation of title to such purchasers or their assigns, the said Philadelphia and Reading Railroad Company and the said Philadelphia and Reading

Coal and Iron Company, mortgagors, each by its proper officers and under its corporate seal, shall, upon request of said purchasers or their assigns, join in said deeds to be executed by the trustee, or, if so requested, shall sign, seal, execute, acknowledge and deliver to such purchasers, or to their assigns, separate deeds of conveyance, transfer, release and further assurance of all the railroad, property and franchises sold under the decree of this court, so as fully and completely to transfer to and invest in the said purchasers and their assigns the full legal and equitable title to all such railroad, property and franchises hereby sold or intended to be sold;'

"And Whereas, Under the provisions and intention of the said General Mortgage it is the duty of this company to make, execute and deliver to the purchasers thereunder proper deeds of confirmation and further assurance;

"Therefore be it

"*Resolved*, That the proper officers of the company be and they are hereby authorized and instructed to make, execute and deliver under the corporate seal, all such deed or deeds of conveyance, bills of sale and other proper assurances in writing as they shall be advised by counsel are proper to carry into effect the purposes set forth in the foregoing preambles, and that they be and are hereby authorized and instructed, from time to time, to make and deliver, under the corporate seal, and to cause to be executed by any trustee or depository holding the same in any form of trust, all such proper instruments of writing as they shall be advised by counsel are required to vest in the purchasers or the successor company to be organized by them, or to which they shall assign or convey the property purchased, or to their appointee, as the case may be, the interest of this company and of such trustee in any property so held in trust for this company or for its use and benefit."

Now, therefore, this Indenture Witnesseth:

That the said The Philadelphia and Reading Coal and Iron Company, party of the first part, in pursuance of its

obligation under said General Mortgage, and in pursuance of the said decree of the said Circuit Court of the United States, and in exercise of all its powers, and in consideration of the premises and of the sum of one dollar paid to it by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, aliened, demised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, assign, alien, release, convey and confirm unto the said Charles Henry Coster and Francis Lynde Stetson, as joint tenants and not as tenants in common, parties of the second part, and to the survivor of them, and to the heirs and assigns of the survivor, forever:

All and singular the right, title, estate, interest, claim and demand of The Philadelphia and Reading Coal and Iron Company of, in and to all the coal lands, coal leases, iron-ore lands, furnace properties and other real estate, premises, estates, property, stocks, securities, credits and interests of every kind mentioned and described, assigned, transferred and conveyed, or intended to be assigned, transferred and conveyed, by The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee, to Charles Henry Coster and Francis Lynde Stetson by deed of even date herewith, and intended to be recorded, as by reference to said deed and conveyance will more fully and at large appear.

Together with all property, real, personal and mixed, of every character and description, and any and all beneficial interest therein, acquired by The Philadelphia and Reading Coal and Iron Company, or by the Receivers of The Philadelphia and Reading Coal and Iron Company, in the course of the operation and management of the same, and to which, or to any beneficial interest in which, the said Philadelphia and Reading Coal and Iron Company are and may become entitled, including all income, proceeds of income, bills and accounts receivable, cash, materials and supplies and other property, rights, equities and equities of redemption in which The Philadelphia and Reading Coal and Iron Company has or can have any interest whatever.

Excepting only such property as heretofore has been conveyed and transferred under the power reserved in any of the mortgages of the said Philadelphia and Reading Coal and Iron Company, or in pursuance of any power heretofore by it lawfully exercised.

To Have and to Hold, all and singular, the above-mentioned coal lands, coal leases, iron-ore lands, furnace properties and other real estate, premises, estates, property, real, personal or mixed, stocks, securities, credits and interests of every kind, including all those mentioned and described, assigned, transferred and conveyed, or intended to be assigned, transferred and conveyed, in the deed of conveyance by the said Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee, to Charles Henry Coster and Francis Lynde Stetson, as hereinbefore referred to, unto the said parties of the second part, as joint tenants, and not as tenants in common, and to the survivor of them, and to the heirs and assigns of such survivor, forever:

Provided, however, That nothing herein contained shall modify the right of the parties of the second part to elect not to assume or adopt any leases or contracts of the party of the first part as reserved by the decree of the Circuit Court of the United States and in the deed by the said trustee to the said parties of the second part.

In order to facilitate the recording hereof, six originals of this deed have been executed, acknowledged and delivered by the party of the first part, all or any one of which may be recorded, and which, when executed, acknowledged and delivered, shall be deemed an original, and all collectively but one instrument.

In Witness Whereof, The said The Philadelphia and Reading Coal and Iron Company has caused these presents to be signed by its president, and its corporate seal to be

hereunto affixed duly attested by its secretary, the day and year first above written.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,

By

J. S. HARRIS,
President.

[L. S.]

Attest:

F. P. KAERCHER,
Secretary.

In presence of:
C. K. KLINK,
H. C. RUSSELL.

CITY OF PHILADELPHIA, }
STATE OF PENNSYLVANIA, } *ss.*

BE IT REMEMBERED That before me, the subscriber, a notary public in and for the said city, personally came and appeared F. P. Kaercher, secretary of the foregoing-named corporation, The Philadelphia and Reading Coal and Iron Company, who, being duly sworn according to law, deposes and says that he was personally present at the execution of the foregoing indenture or mortgage, and saw Joseph S. Harris, president of the said corporation, affix the seal of the said company to the said indenture, and deliver the same as the act and deed of the said company; and that the name of this deponent, subscribed to the said indenture as secretary of the said corporation, in attestation of the due execution and delivery of the said indenture, is of this deponent's own proper handwriting.

F. P. KAERCHER.

Sworn to and subscribed before me. Witness my hand and official seal, this twenty-third day of October, A. D. 1896.

C. K. KLINK,
Notary Public.

[L. S.]

BILL OF SALE.

Joseph S. Harris, Edward M. Paxson, John Lowber Welsh, Receivers of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company,

to

Charles H. Coster and Francis Lynde Stetson.

OF THE SUNDRY SHARES OF STOCKS SOLD UNDER DECREE OF CIRCUIT COURT OF THE UNITED STATES OF MAY 1ST, 1896.

WHEREAS, In compliance with the directions of the decree of May 1st, 1896, of the Circuit Court of the United States for the Eastern District of Pennsylvania, in No. 9, April Sessions, 1895, the undersigned, Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, did, on the twenty-third day of September, 1896, at the time and place fixed in said decree, sell at public auction certain assets of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company then in the possession of said Receivers to Charles H. Coster and Francis Lynde Stetson for the sum of four million five hundred thousand dollars ($4,500,000), in which assets were included the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to the shares of stock named in the following schedule, as in and by the report of said Receivers, duly filed in the suit above mentioned, will fully and at large appear:—

SHARES.	STOCKS.
21,479	Allentown Railroad Company.
19,046	Atlantic City Railroad Company, preferred.
23,972	Atlantic City Railroad Company, common.
1,039	Camden County Railroad Company.
10,135	Catasauqua and Fogelsville Railroad Company.
228	Catawissa Railroad Company, first preferred.
310	Catawissa Railroad Company, second preferred.
1,816	Central Dock and Terminal Railway Company.
750	Chester and Delaware River Railroad Company.
5,601	Colebrookdale Railroad Company.

Shares.	Stocks.
4,992	Delaware River Ferry Company of New Jersey.
5,646	East Mahanoy Railroad Company.
17,555	East Pennsylvania Railroad Company.
10,807	Gettysburg and Harrisburg Railway Company.
1,718	Junction Railroad Company.
2,000	Locust Gap Improvement Company.
3,473	Middletown and Hummelstown Railroad Company.
1,620	Mine Hill and Schuylkill Haven Railroad Company.
1,919	Mill Creek and Mine Hill Navigation and Railroad Company.
768	Mt. Carbon and Port Carbon Railroad Company.
400	Norristown Junction Railroad Company.
6,252	Northeast Pennsylvania Railroad Company.
2,576	North Pennsylvania Railroad Company.
369	Philadelphia, Reading and Pottsville Telegraph Company.
4,102	Philadelphia and Chester Valley Railroad Company, preferred.
9,054	Philadelphia and Chester Valley Railroad Company, common.
39,646	Philadelphia, Harrisburg and Pittsburgh Railroad Company.
1,220	Pickering Valley Railroad Company.
15,726	Reading and Columbia Railroad Company.
9,980	Reading Iron Company.
960	Rupert and Bloomsburg Railroad Company.
945	Schuylkill and Lehigh Railroad Company.
1,238	Schuylkill Valley Navigation and Railroad Company.
39,917	Shamokin, Sunbury and Lewisburg Railroad Company.
49	Allentown Railroad Company.
9	Atlantic City Railroad Company, preferred.
28	Atlantic City Railroad Company, common.
950	*Anthracite Water Company.*
250	*Cystal Water Company.*
75	City Armory Association, of Pottsville.
4	Camden County Railroad Company.
30	Catasauqua and Fogelsville Railroad Company.
38	Central Dock and Terminal Railway Company.
50	Chester and Delaware River Railroad Company.
29	Colebrookdale Railroad Company.
200	Conshohocken Gas and Water Company.
20	Conshohocken Gas and Water Company, preferred.
251	*Central Transfer Company Stock—Lyons.*
5,000	Danville and Shamokin Railroad Company.
517	Delaware Coal Company.
8	Delaware River Ferry Company, of New Jersey.
50	Douglassville and Yellow House Turnpike Company.
27	East Mahanoy Railroad Company.
22	East Pennsylvania Railroad Company.
10	*Good Spring Water Company.*
40	Germantown Transfer Company.
7	Gettysburg and Harrisburg Railway Company.
20	Lehigh Coal and Navigation Company.
417	Harrisburg and Millerstown Railroad Company.
5	Junction Railroad Company.
700	*Mammoth Vein Coal and Iron Company.*
10	Manufacturers' and Consumers' Railroad Company.
27	Middletown and Hummelstown Railroad Company.
8	Mill Creek and Mine Hill Navigation and Railroad Company.
8	Mt. Carbon and Port Carbon Railroad Company.
312	Oliver Iron and Steel Company, preferred.
100	Mansion House Hotel Company, Mauch Chunk.
100	Manayunk and Roxborough Inclined Plane and Railway Company.

Shares.	Stocks.
2,640	Montour Iron and Steel Company.
128	Northeast Pennsylvania Railroad Company.
.....	Permanent Exhibition Company.
400	Pottsville Mining and Manufacturing Company.
10,000	Philadelphia and Frankford Railroad Company.
20,000	Philadelphia and North Branch Railroad Company.
170,000	Philadelphia and Reading Terminal Railroad Company.
40	Philadelphia and Southern Mail Steamship Company.
76	Proprietors of Susquehanna Canal.
3	Perkiomen Railroad Company.
2,703	People's Railway Company, of Pottsville, Pa.
49	Pennsylvania Steel Company.
30	Philadelphia Bourse.
5	Philadelphia and Erie Railroad Company.
.....	Philadelphia Floating Elevator Company.
500	Philadelphia, Newtown and New York Railroad Company.
7,500	Philadelphia, Newtown and New York Railroad Company, preferred.
1,560	Philadelphia Belt Line, preferred.
39,103	Philadelphia, Reading and New England Railroad Company.
3	Philadelphia, Reading and New England Railroad Company, preferred.
21	Philadelphia, Reading and Pottsville Telegraph Company.
35	Philadelphia and Chester Valley Railroad Company, common.
354	Philadelphia, Harrisburg and Pittsburgh Railroad Company.
15	Pickering Valley Railroad Company.
15,650	Port Reading Railroad Company.
40	Port Reading Construction Company.
38	Reading and Columbia Railroad Company.
20	Reading Iron Company.
40	Rupert and Bloomsburg Railroad Company.
55	Schuylkill and Lehigh Railroad Company.
8	Schuylkill Valley Navigation and Railroad Company.
3	Schuylkill Navigation Company, preferred.
300	Schuylkill River West Side Railroad Company.
804	Schuylkill Electric Railway Company.
83	Shamokin, Sunbury and Lewisburg Railroad Company.
1,000	*Silver Creek Water Company.*
4,000	Slatington Railroad Company.
70	Stout's Ferry Bridge Company.
360	Swedes Ford Bridge Company.
6,000	Tamaqua, Hazleton and Northern Railroad Company.
44	Wellman Iron and Steel Company, preferred.
29	Wellman Iron and Steel Company, common.
100	Wilmington and Reading Railroad Company.
390	Windmill Island Ferry Company.

And Whereas, After due notice and hearing the Circuit Court of the United States did on the third day of October, 1896, duly confirm the sale so made by the said Receivers to the said Charles H. Coster and Francis Lynde Stetson, and directed the Receivers to make such transfers and assignments as may be necessary to vest title thereto in the said purchasers and their assigns;

Now, Know all Men by these Presents, That we, Joseph S. Harris, Edward M. Paxson, John Lowber Welsh, Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, in consideration of the payment of money stipulated in said decree, and in compliance with the terms of the said decree, do sell, transfer and assign unto the said Charles H. Coster and Francis Lynde Stetson, their heirs and assigns forever, all and singular the shares of stock named in the foregoing schedule, or the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to such as are pledged, and hereby authorize William R. Taylor to make the necessary transfers on the books of the said companies.

Witness our hands and seals this twenty-third day of October, A. D. 1896.

J. S. HARRIS,
EDWARD M. PAXSON,
JNO. LOWBER WELSH,
Receivers.

Witnesses present:
W. R. TAYLOR,
W. G. BROWN.

BILL OF SALE.

Joseph S. Harris, Edward M. Paxson, John Lowber Welsh, Receivers of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company,

to

Charles H. Coster and Francis Lynde Stetson.

OF SUNDRY BONDS SOLD UNDER DECREE OF CIRCUIT COURT OF THE UNITED STATES OF MAY 1ST, 1896.

WHEREAS, In compliance with the directions of the decree of May 1st, 1896, of the Circuit Court of the United States for the Eastern District of Pennsylvania, in No. 9, April Sessions, 1895, the undersigned, Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, did, on the twenty-third day of September, 1896, at the time and place fixed in said decree, sell at public auction certain assets of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company then in the possession of said Receivers to Charles H. Coster and Francis Lynde Stetson for the sum of four million five hundred thousand dollars ($4,500,000), in which assets were included the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to the bonds named in the following schedule, as in and by the report of said Receivers, duly filed in the suit above mentioned, will fully and at large appear:—

BONDS.	PAR VALUE.
Locust Dale Coal Company	$156,000
People's Railway Company	36,000
Perkiomen Railroad Company	161,100
Philadelphia, Reading and Pottsville Telegraph Company	200,000
Philadelphia and Chester Valley Railroad Co., preferred	25,000
Philadelphia and Chester Valley R. R. Co., not preferred	47,000
Reading and Columbia Railroad Company, firsts	9,500
Reading and Columbia Railroad Company, seconds	35,000
Reading and Columbia Railroad Company, debentures	1,000,000
Schuylkill and Lehigh Railroad Company, firsts	93,900

Bonds.	Par Value.
Big Pond tract, P. & R. C. & I. Co	$1,000
Bechtelsville Iron Company	58,000
Chandler tract, P. & R. C. & I. Co	500
Coal Hill tract, P. & R. C. & I. Co	44,000
Catharine Groh tract, Richardson, Exec., P. & R. C. & I. Co	18,000
Colebrookdale Railroad Company, first mortgage	100
Consolidated mortgage, first series five per cent. fractional scrip	230
Camden County Railroad Company, five per cent. gold mortgage bonds	1,000
Catawissa Railroad Co., improvement mortgage bonds	500,000
Conshohocken Tube Company	600
Davis, John R., bond and mortgage	3,079
Ely & Riehle tract, P. & R. C. & I. Co	111,000
Gettysburg and Harrisburg Railway Company, car trusts	18,000
Hamburg Iron Company	12,500
Iron Car Equipment Company, second mortgage bonds	7,522
Lessig tract, P. & R. C. & I. Co	1,000
Mammoth Vein Coal and Iron Company	209,000
Mansion House Hotel Company, Mauch Chunk	7,000
Montour Iron and Steel Company	265,000
Monocacy Furnace Company	75,000
Mortgages and ground rents	336,005
Norristown Junction Railroad Company	1,500
Pickering Valley Railroad Company	2,000
Pennsylvania Steel Company, consolidated six per cents	19,988
Philadelphia, Harrisburg and Pittsburgh Railroad Co	1,500,000
Philadelphia, Newtown and New York Railroad Company	807,100
Preston Coal and Improvement Company	1,087,000
Reading Traction Company	1,000
Schuylkill and Lehigh Railroad Company	400,000
Schuylkill Navigation Co., boat and car loan, 1863–1913	200
Schuylkill Navigation Company, loan 1844–1897	400
Schuylkill Navigation Company, convertible mortgage loan, 1852–1907	194
Summit land tract, P. & R. C. & I. Co	10,000
Sunbury and Northumberland Street Railway Company	15,000
Susquehanna Canal Company, seven per cent. bonds	1,000
Tamaqua, Hazleton and Northern R. R. Co., first mortgage	300,000
Tamaqua tract, P. & R. C. & I. Co	165,000
Tremont Coal Company	900,000
Walker tract, P. & R. C. & I. Co	2,000
Wood tract, P. & R. C. & I. Co	5,000
Wetherill tract (Lee lands), P. & R. C. & I. Co	4,000

And Whereas, After due notice and hearing the Circuit Court of the United States did, on the third day of October, 1896, duly confirm the sale so made by the said Receivers to the said Charles H. Coster and Francis Lynde Stetson, and directed the Receivers to make such transfers and assignments as may be necessary to vest title thereto in the said purchasers and their assigns;

Now Know all Men by these Presents, That we, Joseph S. Harris, Edward M. Paxson, John Lowber Welsh, Receivers

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of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, in consideration of the payment of money stipulated in said decree, do sell, transfer and assign unto the said Charles H. Coster and Francis Lynde Stetson, their heirs and assigns, forever, all and singular the bonds named in the foregoing schedule, or the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to such as are pledged, and hereby authorize William R. Taylor to make the necessary transfers on the books of the said companies.

Witness our hands and seals, this twenty-third day of October, A. D. 1896.

J. S. HARRIS,
EDWARD M. PAXSON,
JNO. LOWBER WELSH,
Receivers.

Witnesses present:
W. R. TAYLOR,
W. G. BROWN.

BILL OF SALE.

The Philadelphia and Reading Railroad Company

to

Charles H. Coster and Francis Lynde Stetson.

OF SUNDRY ACCOUNTS FOR ADVANCES TO LEASED AND CONTROLLED COMPANIES SOLD UNDER DECREE OF CIRCUIT COURT OF THE UNITED STATES OF MAY 1ST, 1896.

WHEREAS, In compliance with the directions of the decree of May 1st, 1896, of the Circuit Court of the United States for the Eastern District of Pennsylvania, in No. 9, April Sessions, 1895, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee of the General Mortgage of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, did, on the twenty-third day of September, 1896, at the time and place fixed in said decree, sell at public auction the property, premises and franchises of every description described in said General Mortgage, or by said decree adjudged to have become subject thereto, of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company to Charles H. Coster and Francis Lynde Stetson for the sum of sixteen million dollars ($16,000,000), in which property were included the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to the following accounts for advances made by the said The Philadelphia and Reading Railroad Company to the leased and controlled companies named, as in and by the report of said trustee, duly filed in the suit above mentioned, will more fully and at large appear:—

Reading and Columbia Railroad Company	$111,962 39
Stony Creek Railroad Company	423,512 84
Perkiomen Railroad Company	875,928 24
Philadelphia, Newtown and New York Railroad Company, account construction	29,680 08
Atlantic City Railroad Company	438,288 20
Northeast Pennsylvania Railroad Company	128,270 04
Philadelphia and Chester Valley Railroad Company	56,255 97
Rupert and Bloomsburg Railroad Company	36,963 04
Middletown and Hummelstown Railroad Company	36,527 90
Philadelphia and Northern Railroad Company	58,330 71

Gettysburg and Harrisburg Railway Company		$129,499 63
Delaware River Ferry Company of New Jersey		80,222 06
Philadelphia and Reading Terminal Railroad Company		2,545,491 77
Catasauqua and Fogelsville Railroad Company		50,544 00
Chester and Delaware River Railroad Company		147,174 14
Camden County Railroad Company		84,074 34
Tamaqua, Hazleton and Northern Railroad Company		63,349 37
Philadelphia and Frankford Railroad Company		21,852 15
Port Reading Railroad Company		93,351 02
Philadelphia Belt Line Railroad Company		222,821 18
Langhorne and Bristol Railroad Company		131 32
Dutchess County Railroad Company		21,538 03
Philadelphia, Reading and New England Railroad Company		563,774 27
Colebrookdale Railroad Company		71,872 99
Pickering Valley Railroad Company		417,213 88
Schuylkill Water Company		57,277 47
Twelfth Street Market Company		14,598 75
Preston Coal and Improvement Company		304,135 00
Tremont Coal Company		201,000 00
Mammoth Vein Coal and Iron Company		64,440 00
Terminal Market and Cold Storage		48,470 38
River Front Railroad Company		79,468 27
Catawissa Railroad Company, permanent improvements		286,516 67
East Pennsylvania Railroad Company, permanent improvements		9,844 65
Mine Hill and Schuylkill Haven Railroad Company, permanent improvements		55,401 40
Catawissa Railroad, account Newberry Extension		423,736 05
Schuylkill and Lehigh Railroad Company, permanent improvements		26,604 95
North Pennsylvania Railroad Company, permanent improvements		23,456 76
East Mahanoy Railroad Company, permanent improvements		8,742 59
		$8,112,322 68
LESS CREDITS.		
Philadelphia, Harrisburg and Pittsburgh Railroad Company	$719,429 49	
Chestnut Hill and Jenkintown Railroad Company	538 86	
Allentown Railroad Company	22,731 60	
Shamokin, Sunbury and Lewisburg Railroad Company	614,790 70	
		1,357,490 65
Total		$6,754,832 03

AND WHEREAS, After due notice and hearing the Circuit Court of the United States did, on the third day of October, 1896, duly confirm the sale so made by the said trustee to the said Charles H. Coster and Francis Lynde Stetson, and directed the said trustee to make and deliver deeds of conveyance conveying the property sold to the said purchasers and their assigns;

AND WHEREAS, The said Circuit Court of the United States did further order and decree that by way of further assurance and confirmation of title to such purchasers or their assigns the said Philadelphia and Reading Railroad Company and the said Philadelphia and Reading Coal and Iron Company, mortgagors, each by its proper officers and under its corporate seal, should, upon request of said purchasers or their assigns, join in said deeds to be executed by the trustee, or if so requested, should sign, seal, execute, acknowledge and deliver to such purchasers or their assigns separate deeds of conveyance, transfer, release and further assurance of all the railroad, property and franchises sold under the decree of this court, so as fully and completely to transfer to and vest in the said purchasers and their assigns the full legal and equitable title to all of such railroads, property and franchises sold or intended to be sold;

Now Know all Men by these Presents, That The Philadelphia and Reading Railroad Company, in consideration of the payment of the moneys stipulated in said decree, and in compliance with the terms of the said decree, do sell, transfer, assign and set over unto the said Charles H. Coster and Francis Lynde Stetson, jointly and not severally, and to the survivor of them, and the executors and administrators of such survivor, forever, the right, title and interest of the Philadelphia and Reading Railroad Company of, in and to the said accounts against the companies named in the foregoing schedule, and each of them.

In Witness Whereof, The Philadelphia and Reading Railroad Company has hereunto affixed its corporate seal, this twenty-third day of October, A. D. 1896.

THE PHILADELPHIA AND READING
RAILROAD COMPANY,

By

J. S. HARRIS,
President.

[SEAL]

Attest:

W. R. TAYLOR,
Secretary.

Witnesses present:

W. G. BROWN,
ALBERT H. MOORE.

BILL OF SALE.

Joseph S. Harris, Edward M. Paxson, John Lowber Welsh, Receivers of The Philadelphia and Reading Railroad Company,

to

Charles H. Coster and Francis Lynde Stetson.

OF SUNDRY BONDS OF AND CLAIMS AGAINST THE PHILADELPHIA AND READING COAL AND IRON COMPANY, SOLD UNDER DECREE OF CIRCUIT COURT OF THE UNITED STATES OF MAY 1ST, 1896.

WHEREAS, In compliance with the directions of the decree of May 1st, 1896, of the Circuit Court of the United States for the Eastern District of Pennsylvania, in No. 9, April Sessions, 1895, the undersigned, Receivers of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, did, on the twenty-third day of September, 1896, at the time and place fixed in said decree, sell at public auction certain assets of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company then in the possession of said Receivers to Charles H. Coster and Francis Lynde Stetson for the sum of four million five hundred thousand dollars ($4,500,000), in which assets were included the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to certain bonds of The Philadelphia and Reading Coal and Iron Company, one thereof, dated July 1st, 1874, for the principal sum of thirty million dollars ($30,000,000), and secured by mortgage dated July 1st, 1874, and the other thereof, dated December 28th, 1876, for the principal sum of ten million dollars ($10,000,000), secured by mortgage dated December 28th, 1876; and also certain claims or demands of The Philadelphia and Reading Railroad Company against The Philadelphia and Reading Coal and Iron Company, as follows, to wit:—

A. Loan account, representing cash advances, &c $24,879,336 16
B. Current business account, approximating 4,300,000 00

as in and by the report of said Receivers, duly filed in the suit above mentioned, will fully and at large appear.

And Whereas, After due notice and hearing the Circuit Court of the United States did, on the third day of October, 1896, duly confirm the sale so made by the said Receivers to the said Charles H. Coster and Francis Lynde Stetson, and directed the Receivers to make such transfers and assignments as may be necessary to vest title thereto in the said purchasers and their assigns;

Now Know all Men by these Presents, That we, Joseph S. Harris, Edward M. Paxson, John Lowber Welsh, Receivers of The Philadelphia and Reading Railroad Company, in consideration of the payment of money stipulated in said decree, and in compliance with the terms of the said decree, do sell, transfer and assign unto the said Charles H. Coster and Francis Lynde Stetson, their heirs and assigns, forever, the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to the said bonds of and claims against The Philadelphia and Reading Coal and Iron Company, and hereby authorize William R. Taylor to make the necessary transfers on the books of the said company.

Witness our hands and seals, this twenty-third day of October, A. D. 1896.

J. S. HARRIS,
EDWARD M. PAXSON,
JNO. LOWBER WELSH,
Receivers.

Witnesses present:
W. R. Taylor,
W. G. Brown.

DEED.

CHARLES H. COSTER AND FRANCIS LYNDE STETSON TO PHILADELPHIA AND READING RAILWAY COMPANY. DATED NOVEMBER 16TH, 1896.

THIS INDENTURE, Made the sixteenth day of November, in the year one thousand eight hundred and ninety-six, between *Charles Henry Coster and Emily P.* his wife, of Tuxedo, Orange County, New York; and *Francis Lynde Stetson and Elizabeth R.* his wife, of the city, county and State of New York, parties of the first part, and *Philadelphia and Reading Railway Company*, a corporation of the State of Pennsylvania, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of $40,000,000 to be paid by the Philadelphia and Reading Railway Company to them by an issue of $20,000,000 of capital stock of the said Railway Company, and by a purchase-money bond and mortgage of $20,000,000, which mortgage shall be a lien upon all the property hereby conveyed, and in further consideration of the covenants and conditions of an agreement between Charles Henry Coster and Francis Lynde Stetson, of the first part, and the Philadelphia and Reading Railway Company, of the second part, to be delivered hereunder, have granted, bargained, sold, aliened, released and confirmed, and by these presents, do grant, bargain, sell, alien, release and confirm unto the said Philadelphia and Reading Railway Company and its successors forever, all and singular all the following lines of railroads:—

1. The Main Line, extending from its termini at Port Richmond and Willow Street Wharf, on the Delaware River, in the city of Philadelphia, through the Schuylkill Valley, via Reading, to its junction with the Mount Carbon Branch, at Mount Carbon, near Pottsville, in the county of Schuylkill (including the Tabor Branch, extending from its connection with the Main Line at Nicetown

to its connection with the North Pennsylvania Railroad at Tabor Junction, the Venice Branch from its connection with the main line near Pencoyd to East Manayunk, the Bellevue Branch from its connection with the Norristown Railroad at Bellevue Station to East Falls; also, Linden Street Yard, in Camden, N. J., connected by floats with Port Richmond, Philadelphia, Pa.), being one hundred and four and forty-four one-hundredths miles in length of double-track and two and eight one-hundredths miles in length of single-track railroad, and embracing with its sidings and turnouts four hundred and forty-one and seventy-six one-hundredths miles of single track.

2. The Lebanon Valley Branch, extending from its junction with the said main line at Reading, in the county of Berks, through the Lebanon Valley, via Lebanon, to Harrisburg, in the county of Dauphin, including the Avon Branch from its connection with the Lebanon Valley Railroad east of Lebanon Station to Brock's furnaces; the Manufacturers' Branch from its connection east of Harrisburg to Harrisburg Car Works, and the Steelton Branch from its connection east of Harrisburg to Steelton, Pa., being fifty-nine and twenty-nine one-hundredths miles in length, of which forty-five and nine-tenths miles are double track, and embracing, with its sidings and turnouts, one hundred and forty and eighty-eight one-hundredths miles of single track.

3. The Lebanon and Tremont Branch, extending from its junction with the said Lebanon Valley Branch at Lebanon, in the county of Lebanon, via Pine Grove, to its termini at Brookside, in said county of Schuylkill, including the Lorberry Branch from its connection with the Lebanon and Tremont Branch at Lorberry Junction to Clark's Valley; the Good Spring Branch from its connection with the Lorberry Branch at Good Spring Junction to Good Spring breaker, being sixty-five and twenty-eight one-hundredths miles in length, and embracing, with its sidings, seventy-five and fifty-seven one-hundredths miles of single track.

9. The Mahanoy and Shamokin Branch, extending from its junction with the railroad of the Mill Creek and Mine Hill Navigation and Railroad Company, near Newcastle, and from a point three hundred and sixty-five feet south of Mahanoy City Station, in the said county of Schuylkill, via Mahanoy Plane and Ashland, to Locust Dale, in the county of Columbia, and from a connection with the Mine Hill and Schuylkill Haven Railroad Company at Locust Summit, via Shamokin, Trevorton and Herndon, to its terminus at Port Trevorton, on the Susquehanna River, in the county of Snyder, including the Mahanoy City colliery branch, Elmwood colliery branch, Mahanoy City Jig House branch, Tunnel Ridge colliery branch, Fuel Plant branch, Knickerbocker colliery branch, Ellangowan colliery branch, Yatesville Washery branch, Bear Run colliery branch, Boston Run colliery branch, Draper colliery branch, Gilberton colliery branch, Snyder Coal Company branch, Lawrence colliery branch, Shenandoah Branch, West Bear Ridge Colliery branch, Hammond Branch, Hammond colliery branch, Girard Mammoth colliery branch, Old Locust Creek colliery branch, William Penn colliery branch, Turkey Run colliery branch, Kohinoor colliery branch, Shenandoah City colliery branch, Old Plank Ridge colliery branch, Indian Ridge colliery branch, Kehley Run colliery branch, Girard colliery branch, Preston No. 3 colliery branch, Potts' colliery branch, Helfenstein branch, Monitor colliery branch, Alaska colliery branch, Mount Carmel Branch, Reliance colliery branch, Mount Carmel colliery branch, Old Alaska Shaft branch, Enterprise colliery branch, Excelsior colliery branch, Old Greenback colliery branch, Buck Ridge colliery branch, Garfield colliery branch, Big Mountain colliery branch, Henry Clay colliery branch, Carbon Run Branch, Burnside colliery branch, Herndon Branch, North Franklin No. 2 colliery branch and North Franklin No. 1 colliery branch, being ninety-three and seventy-nine one-hundredths miles in length, of which twenty-six and one-tenth miles are double track, and embracing, with its sidings, one hundred and eighty-six and twenty-four one-hundredths miles of single-track railroad.

5. The Mount Carbon Branch, which extends from its junction with the said main line at Mount Carbon, in the said county of Schuylkill, to its termini at Mount Laffee and Wadesville, in the same county, being seven and forty-four one-hundredths miles in length, of which one and forty-five one-hundredth miles are double track, and embracing, with its branches and sidings, eighteen and thirty-three one-hundredths miles of single-track railroad.

6. The Schuylkill and Susquehanna Branch, extending from its junction with the said main line at Auburn, in the said county of Schuylkill, to its junction with the Pennsylvania Railroad at Rockville, in the said county of Dauphin, being fifty-three and four-tenths miles in length, and embracing, with its branches, sidings and turnouts, sixty-two and seven-tenths miles of single track.

7. The Port Kennedy Branch, extending from its junction with the said main line at Port Kennedy, in the county of Montgomery, one and two-tenths miles in length, and embracing, with its sidings and turnouts, one and three-tenths miles of single track.

8. The West Reading Branch, extending from its junction with the said Lebanon Valley Branch, in and through the city of Reading, the county of Berks, to the foot of Sixth Street, in said city, two and seventeen one-hundredths miles in length, and embracing, with its sidings and turnouts, five and twenty-five one-hundredths miles of single track.

9. The Moselem Branch, extending from its junction with the said main line at Leesport, in Berks County, and reaching with a lateral the Leesport Iron Company's furnace, one and nine-tenths miles in length, and embracing, with its laterals and sidings, a distance of two and six-tenths miles of sigle track.

10. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for nine hundred and ninety-nine years from the first day of December, 1870, in pursuance of a lease dated November 10th, 1870, duly recorded) of, in and to the Philadelphia, Germantown and Norristown Railroad, which extends

from its junction with the said main line at Ninth and Willow Streets, in the said city of Philadelphia, to its termini at Norristown, in the said county of Montgomery, and Germantown, in the county of Philadelphia, being twenty and five-tenths miles in length, of which twenty and two-tenths miles are double-track railroad, and embracing, with its sidings and turnouts, seventy-nine and sixty-two one-hundredths miles of single track.

11. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for nine hundred and ninety-nine years from the first day of December, 1870, in pursuance of a lease dated November 10th, 1870, duly recorded) of, in and to the Plymouth Railroad, which extends from its junction with the said Philadelphia, Germantown and Norristown Railroad at Conshohocken, in the said county of Montgomery, to its junction with the North Pennsylvania Railroad at Oreland, in the said county, being eight and nine-tenths miles in length, and embracing, with its turnouts and sidings, twelve and twenty-three one-hundredths miles of single track.

12. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for twenty years from the first day of January, 1870, in pursuance of a lease dated 17th January, 1870) of, in and to the Colebrookdale Railroad, which extends from its junction with the said main line at Pottstown, in the said county of Montgomery, through the valley of the Manatawny to Mount Pleasant, now Barto, in the said county of Berks, being twelve and nine-tenths miles in length, and embracing, with its sidings and turnouts, fifteen and nine-tenth miles of single track.

13. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for nine hundred and ninety-nine years from the first day of May, 1869, in pursuance of a lease dated May 19th, 1869, duly recorded) of, in and to the East Pennsylvania Railroad, which extends from its junction with the said main line at Reading, in the said county of Berks, to its present ter-

minus at Allentown, in the county of Lehigh, being thirty-five and thirty-three one-hundredths miles in length, of which eighteen and twenty-three one-hundredths miles are double-track railroad, and embracing, with its sidings and laterals, seventy-one and eight one-hundredths miles of single track.

14. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for nine hundred and ninety-nine years from the twenty-fifth day of July, 1861, in pursuance of a lease of that date, duly recorded) of, in and to the railroad of the Schuylkill Valley Navigation and Railroad Company, which extends from its junction with the Mount Carbon and Port Carbon Railroad near Port Carbon, in the said county of Schuylkill, to its junction with the railroad of the said Little Schuylkill Navigation, Railroad and Coal Company near Reevesdale, in the same county, including Brockville Branch, Eagle Hill Branch, Silver Creek Branch, Big Vein Branch and Coal Hill Branch, being sixteen and twenty-nine one-hundredths miles in length, of which five and fourteen one-hundredths miles are double-track railroad, embracing, with its sidings and turnouts, twenty-six and sixty-seven one-hundredths miles of single track.

15. Also all the estate, right, title and interest of the parties of first part (being a leasehold interest for nine hundred and ninety-nine years from the twenty-fifth day of July, 1861, in pursuance of a lease of that date, duly recorded) of, in and to the railroad of the Mill Creek and Mine Hill Navigation and Railroad Company, which extends from its junction with the said Mount Carbon and Port Carbon Railroad near Port Carbon, in the said county of Schuylkill, to its junction with the said Mahanoy and Shamokin Branch at or near Newcastle, in the same county, including North American Branch, Crow Hollow Branch, John's Branch and Jones' Branch, being six and sixty-two one-hundredths miles in length, of which three and eight-tenths miles are double track, and embracing, with its sidings and turnouts, twenty-nine and four-tenths miles of single track.

16. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for fifty years from the fifth day of March, 1860, in pursuance of a lease of that date, duly recorded) of, in and to the said Mount Carbon and Port Carbon Railroad, which extends from its junction with the said main line near Mount Carbon, in the said county of Schuylkill, to its junction with the railroads of the said Mill Creek and Mine Hill and the Schuylkill Valley Navigation and Railroad Companies at or near Port Carbon, in the same county, including Port Carbon Branch from Port Carbon Valley scales to Allison's shops, being two and ninety-six one-hundredths miles in length, of which two and fifty-four one-hundredths miles are double track, and embracing, with its sidings and turnouts, thirteen and sixty-three one-hundredths miles of single track.

17. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for the term of nine hundred and ninety years from the first day of May, A. D. 1879, in pursuance of a lease from the North Pennsylvania Railroad Company, bearing date the fourteenth day of May, A. D. 1879, duly recorded) of, in and to the main line of the railroad of the North Pennsylvania Railroad Company, extending from its terminus in Philadelphia at Willow Street to Bethlehem, in the county of Lehigh, being fifty-five and fifty-seven one-hundredths miles in length, of which fifty-four and five-tenths miles are double-track railroad, and embracing, with its sidings and laterals, other than the two branches hereinafter mentioned, one hundred and fifty-three and thirty-one one-hundredths miles of single track, and the branches of said main line of the North Pennsylvania Railroad known and designated in said lease as the "Delaware River Branch" and "Doylestown Branch," the former extending from its connection with the said main line of the North Pennsylvania Railroad at Jenkintown, in the county of Montgomery and State of Pennsylvania, to its connection with the railroad of the Delaware and Bound Brook Railroad Company at the centre of the bridge crossing the river

Delaware near Yardley, in the County of Bucks and State aforesaid, being twenty and five-tenths miles in length of double-track railroad, and embracing, with its sidings and laterals, fifty-two and one-tenth miles of single track, and the latter extending from its connection with said main line at Lansdale, in the said county of Montgomery, to Doylestown, in the said county of Bucks, being ten and fifteen one-hundredths miles in length, and embracing, with its sidings and turnouts, eleven and seventy-six one-hundredths miles of single track.

18. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for the term of nine hundred and ninety years from the first day of May, A. D. 1879, in pursuance of a lease from the Delaware and Bound Brook Railroad Company, bearing date the fourteenth day of May, A. D. 1879, duly recorded) of, in and to the railroad of the said Delaware and Bound Brook Railroad Company, extending from its connection with the Delaware River Branch of the North Pennsylvania Railroad at the centre of the bridge crossing the Delaware River near Yardley, to Bound Brook Junction, in the county of Somerset, State of New Jersey, together with the branch railroad three and seven-tenths miles in length known as the Trenton Branch, extending from its connection with the main line of said railroad at a point known as Trenton Junction, in the county of Mercer, in the State of New Jersey, to Trenton, in the said State, in all being thirty and eighty-one one-hundredths miles in length, of which twenty-seven miles are double track, and embracing, with its sidings and laterals, seventy-three and fourteen one-hundredths miles.

19. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for the term of twenty-nine years from the first day of September, A. D. 1871, in pursuance of a lease dated January 18th, 1872, duly recorded) of, in and to the railroad of the Pickering Valley Railroad Company, extending from its junction with the main line aforesaid at Phoenixville, in the county of Chester, to Byers Station, a distance of

eleven and three-tenths miles, and embracing, with its laterals and sidings, twelve and four-tenths miles of single track.

20. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for the term of nine hundred and ninety-nine years from the first day of July, A. D. 1873, in pursuance of a lease from the Philadelphia, Wilmington and Baltimore Railroad Company, bearing date the first day of July, A. D. 1873, duly recorded) of, in and to the railroad known as the Philadelphia and Chester Branch extending from Gray's Ferry, in the city of Philadelphia, to Eddystone in the county of Delaware a distance of nine and eight-tenths miles in length and embracing, with its sidings and turnouts, fifteen miles of single track.

21. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for nine hundred and ninety-nine years from the first day of May, A. D. 1883, in pursuance of a lease of the eleventh day of April, 1883, duly recorded) of, in and to the Schuylkill and Lehigh Railroad, which extends from its southern terminus at its junction with the Wilmington and Northern Railroad, on Ezra High's farm, in Cumru Township, Berks County, to its northern terminus at or near Slatington, in Lehigh County, Pennsylvania, being forty-four miles in length, and embracing, with its sidings and turnouts, forty-nine and twenty-four one-hundredths miles of single track.

22. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for nine hundred and ninety-nine years from the second day of July, A. D. 1883, in pursuance of a lease of that date) of, in and to the Shamokin, Sunbury and Lewisburg Railroad, which extends from Carbon Run Junction to West Milton Junction, in the State of Pennsylvania, being thirty-one and twenty-eight one hundredths miles in length, of which fourteen and eighty one-hundredths miles are double track, and embracing, with its sidings and turnouts, fifty-eight and eight one-hundredths miles

23. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for a term of nine hundred and ninety-nine years from the fifteenth day of October, A. D. 1890, in pursuance of a lease from the Philadelphia, Harrisburg and Pittsburgh Railroad Company, bearing date the fifteenth day of October, A. D. 1890, to The Philadelphia and Reading Railroad Company, duly recorded) of, in and to the railroads of the Philadelphia, Harrisburg and Pittsburgh Railroad Company, the main line of which extends from its terminus at Harrisburg, in the county of Dauphin, to Shippensburg, in the county of Cumberland, including the Philadelphia and Reading ore branch and the Cleversburg Branch, being forty-five and fifty-eight one-hundredths miles in length, and embracing, with its sidings and turnouts, fifty-six and forty-eight one-hundredths miles of single track.

24. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for a term of nine hundred and ninety-nine years from the first day of May, 1891, in pursuance of a contract and agreement made between the Philadelphia and Reading Terminal Railroad Company, The Philadelphia and Reading Railroad Company and the Provident Life and Trust Company of Philadelphia, trustee, bearing date the first day of May, A. D. 1891, duly recorded) of, in and to the Philadelphia and Reading Terminal Railroad, which extends from its connection with the Philadelphia, Germantown and Norristown Railroad at Fairmount Avenue, and from its connection with the main line of The Philadelphia and Reading Railroad Company at Broad Street, to its terminus at Twelfth and Market Streets, within the city of Philadelphia, being one and three-tenths miles in length of double track, and embracing, with its sidings and turnouts, five and sixty-eight one-hundredths miles of single track.

25. Also all the estate, right, title and interest of the parties of the first part (being a leasehold interest for nine hundred and ninety-nine years from the tenth day of

July, 1889, in pursuance of a contract and agreement made between the Allentown Terminal Railroad Company, the Lehigh Coal and Navigation Company and The Philadelphia and Reading Railroad Company, bearing date the tenth day of July, 1889, duly recorded) of, in and to the Allentown Terminal Railroad, extending from its point of connection with the Lehigh and Susquehanna Railroad, in Hanover Township, Lehigh County, crossing the Lehigh River and Kline's Island in and through Saulsburg Township to the city of Allentown, and recrossing the Lehigh River to its northern connection with the Lehigh and Susquehanna Railroad and also the branch from a point near the Barber Branch of the Lehigh Valley Railroad to a connection with the East Pennsylvania Railroad, and another branch from the connection with the East Pennsylvania Railroad to the main line of the Allentown Terminal Railroad, being three and one-third miles in length.

Being a part of the same railroads and interests in railroads conveyed to the said Charles Henry Coster and Francis Lynde Stetson by deed of The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, dated the twenty-third day of October, 1896, and by the deed of The Philadelphia and Reading Railroad Company to said Charles Henry Coster and Francis Lynde Stetson, bearing date the twenty-third day of October, 1896, as by reference to said deeds, duly recorded, will more fully and at large appear.

Together with all the sidings, stations, depots, wharves, yards, rights of way, superstructure, branches and appurtenances connected with or relating to the said railroads and premises or any of them.

Together with all the easements, rights, privileges, hereditaments and appurtenances whatsoever unto any of the hereby granted and mentioned premises and the estate belonging and appertaining, or to belong and appertain, and the reversions and remainders, rents, issues, profits and income thereof, and all the estate, right, title and interest, property, claim and demand of every nature

and kind whatsoever of the said parties of the first part, as well at law as in equity, of, in and to the same and every part and parcel thereof.

And together also with all and every the right, title, estate and interest which The Philadelphia and Reading Railroad Company had in or to the property and premises hereinabove described and mentioned on the third day of January, 1888, or at any time thereafter acquired, excepting the following leases and contracts which the parties of the first part hereto have elected, and do elect, not to assume or adopt, to which several contracts of the respective dates hereinafter stated The Philadelphia and Reading Railroad Company and the several persons or corporations hereinafter named, respectively, were parties, viz:—

The Philadelphia and Reading Railroad Company and East Trenton Railroad Company, May 1st, 1888.

The Philadelphia and Reading Railroad Company and Pennsylvania Warehousing and Safe Deposit Company, December 22d, 1890.

The Philadelphia and Reading Railroad Company and Wilmington and Northern Railroad Company, May 16th, 1879.

The Philadelphia and Reading Railroad Company, Jersey Shore, Pine Creek and Buffalo Railway Company, Fall Brook Coal Company, the Beech Creek, Clearfield and Southwestern Railroad Company and Clearfield Bituminous Coal Company, April 13th, 1883.

The Philadelphia and Reading Railroad Company and Lancaster and Reading Narrow Gauge Railroad Company, March 25th, 1874.

Schuylkill Navigation Company and The Philadelphia and Reading Railroad Company, July 12th, 1870.

Susquehanna Canal Company and The Philadelphia and Reading Railroad Company, January 2d, 1872.

The Philadelphia and Reading Railroad Company and City Trust, Safe Deposit and Surety Company, and Missouri, Kansas and Texas Trust Company, December 28th, 1891, and May 23d, 1893.

North River Coal and Wharf Company and The Philadelphia and Reading Railroad Company, December 7th, 1888, and January 5th, 1889.

The Philadelphia and Reading Railroad Company and the Williams Valley Railroad Company, November 30th, 1891, and April 2d, 1892.

The Philadelphia and Reading Railroad Company, Reading and Columbia Railroad Company, Cornwall Railroad Company and Cornwall and Mt. Hope Railroad Company, September 22d, 1883.

The Philadelphia and Reading Railroad Company and Samuel Crothers, August 5th, 1889.

New York and New England Railroad Company, West Shore Railroad Company, Lake Shore and Michigan Southern Railroad Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Fall Brook Railway Company, The Philadelphia and Reading Railroad Company and Central Railroad Company of New Jersey, November 16th, 1893.

Atkins Brothers and Pottsville Iron and Steel Company, successors of Atkins Brothers, and The Philadelphia and Reading Railroad Company, June 27th, 1872, and June 14th, 1889.

The Philadelphia and Reading Railroad Company, Pickering Valley Railroad Company and Delaware River and Lancaster Railroad Company, May 14th, 1890.

Philadelphia and West Chester Railroad Company and The Philadelphia and Reading Railroad Company, July 5th, 1892.

The Philadelphia and Reading Railway Company and Charles M. Taylor's Sons, March 16th, 1894.

Estate of Charles Wheeler and The Philadelphia and Reading Railroad Company, December 22d, 1891.

The Philadelphia and Reading Railroad Company and Excelsior Coal Mining Company, February 16th, 1889.

Philadelphia and Northern Railroad Company, The Philadelphia and Reading Railroad Company, Philadelphia and Reading Terminal Railroad Company and Provident Life and Trust Company, August 1st, 1892.

The Philadelphia and Reading Railroad Company and C. F. Kindred and others, July 28th, 1893.

Iron Steamboat Company and The Philadelphia and Reading Railroad Company, January 11th, 1893.

Chestnut Hill Railroad Company and The Philadelphia and Reading Railroad Company, November 30th, 1870.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company, Edward M. Paxson, Joseph S. Harris and John Lowber Welsh, Receivers; Frederic P. Olcott *et al.*, committee; Finance Company of Pennsylvania and Pennsylvania Warehousing and Safe Deposit Company, June 18th, 1895.

The Pennsylvania Warehousing and Safe Deposit Company and The Philadelphia and Reading Railroad Company, February 19th, 1890.

The Pennsylvania Warehousing and Safe Deposit Company and The Philadelphia and Reading Railroad Company, May 20th, 1892, and July 1st, 1892.

The Philadelphia and Reading Railroad Company and Guarantee Trust and Safe Deposit Company, trustee, May 20th, 1892.

The Philadelphia and Reading Railroad Company and Guarantee Trust and Safe Deposit Company, trustee, July 1st, 1892.

The Philadelphia and Reading Railroad Company and Pennsylvania Warehousing and Safe Deposit Company, May 20th, 1892.

Guarantee Trust and Safe Deposit Company, The Philadelphia and Reading Railroad Company and Pennsylvania Warehousing and Safe Deposit Company, May 20th, 1892, and July 1st, 1892.

The Philadelphia and Reading Railroad Company and Guarantee Trust and Safe Deposit Company, trustee, January 26th, 1894.

New York Central and Hudson River Railroad Company, the Geneva and Lyons Railroad Company, the Syracuse, Geneva and Corning Railway Company, the Corn--

ing, Cowanesque and Antrim Railway Company, Fall Brook Coal Company, the Jersey Shore, Pine Creek and Buffalo Railway Company, The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company, February 4th, 1882.

New York Central and Hudson River Railroad Company, The Philadelphia and Reading Railroad Company, the Corning, Cowanesque and Antrim Railway Company, the Jersey Shore, Pine Creek and Buffalo Railway Company and William H. Vanderbilt, February 4th, 1882.

New York Central and Hudson River Railroad Company, Fall Brook Coal Company, the Jersey Shore, Pine Creek and Buffalo Railway Company, The Philadelphia and Reading Railroad Company and others, April 1st, 1882.

New York Central and Hudson River Railroad Company, Fall Brook Coal Company, the Jersey Shore, Pine Creek and Buffalo Railway Company, The Philadelphia and Reading Railroad Company and others, July 15th, 1882.

New York Central and Hudson River Railroad Company, The Philadelphia and Reading Railroad Company, Corning, Cowanesque and Antrim Railway Company, Jersey Shore, Pine Creek and Buffalo Railway Company and William H. Vanderbilt, July 15th, 1882.

Coxe Bros. & Co., Cross Creek Coal Company and The Philadelphia and Reading Railroad Company, May 14th, 1891.

The Philadelphia and Reading Railroad Company and the Delaware, Susquehanna and Schuylkill Railroad Company, May 14th, 1891.

Baltimore and Ohio Railroad Company, Baltimore and Philadelphia Railroad Company, The Philadelphia and Reading Railroad Company, the Schuylkill River East Side Rail-Railroad Company, November 6th, 1885.

Same parties, November 6th, 1885.

Baltimore and Ohio Railroad Company, Baltimore and Philadelphia Railroad Company, The Philadelphia and Reading Railroad Company, the Schuylkill River East Side

Railroad Company and Central Railroad Company of New Jersey, July 27th, 1886.

The Schuylkill River East Side Railroad Company, Baltimore and Ohio Railroad Company, Baltimore and Philadelphia Railroad Company and The Philadelphia and Reading Railroad Company, November 6th, 1885.

Pullman's Palace Car Company and The Philadelphia and Reading Railroad Company, March 23d, 1889, February 18th, 1893.

The Philadelphia and Reading Railroad Company and Pennsylvania Railroad Company, June 8th, 1887, and June 17th, 1887.

The Philadelphia and Reading Railroad Company and Philadelphia, Reading and New England Railroad Company, August 1st, 1892.

Lehigh Valley Railroad Company and The Philadelphia and Reading Railroad Company, February 11th, 1892.

Pennsylvania Company for Insurances on Lives and Granting Annuities and The Philadelphia and Reading Railroad Company, November 22d, 1888.

Western Maryland Company, The Philadelphia and Reading Railroad Company and the Harrisburg and Potomac Railroad Company, June 12th, 1889.

Buffalo, Rochester and Pittsburgh Railway Company, New York Central and Hudson River Railroad Company and The Philadelphia and Reading Railroad Company, May 10th, 1892.

Bloomsburg and Sullivan Railroad Company, Rupert and Bloomsburg Railroad Company, Bloomsburg Belt Railroad Company and The Philadelphia and Reading Railroad Company, May 13th, 1892.

To Have and to Hold the railroads, premises and estates hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said Philadelphia and Reading Railway Company, its successors and assigns, forever.

Subject, nevertheless, to the prior liens and incumbrances so far as they respectively attach to the premises hereby conveyed, or any part thereof, as provided in the deed of The

Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, to the said Charles Henry Coster and Francis Lynde Stetson, bearing date the twenty-third day of October, 1896, and duly recorded.

And subject, also, to all the liabilities and obligations of every kind and nature whatsoever which have been incurred in any way by the said Charles Henry Coster and Francis Lynde Stetson from the time they acquired the title to said railroads, estates and premises, or as a condition of the acquisition thereof, all of which as part of the consideration of this grant the party of the second part hereby assumes and agrees to pay and perform.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals, this sixteenth day of November, 1896.

C. H. COSTER, [L. S.]
EMILY PELL COSTER. [L. S.]

FRANCIS LYNDE STETSON. [L. S.]
ELIZABETH R. STETSON. [L. S.]

Signed, sealed and delivered
in the presence of:
WM. H. BRUDER.

Interlineation before
delivery:
W. R TAYLOR.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.*

On the sixteenth day of November, 1896, before me, the subscriber, a notary public for the city and county of New York, personally appeared the above-named Charles Henry Coster and Emily P. his wife, and Francis Lynde Stetson and Elizabeth his wife, who severally, in due form of law, acknowledged the foregoing deed to be their act and deed, to the end that the same might be recorded as such.

The said Emily P. Coster and Elizabeth R. Stetson, both being of full age and by me examined separate and apart from their said husbands, and the contents of the foregoing deed being first made fully known to them, declared that they did voluntarily and of their own free will and accord seal, and as their act and deed deliver the same without any coercion or compulsion of their said husbands.

Witness my hand and official seal the day and year aforesaid.

[SEAL]

WM. H. BRUDER,
Notary Public (201),
New York County.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.*

I, Henry D. Purroy, clerk of the city and county of New York, and also clerk of the Supreme Court for the said city and county, the same being a court of record, do hereby certify that William H. Bruder, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same. And further that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I hereunto set my name and affix the seal of the said court and county the sixteenth day of November, 1896.

HENRY D. PURROY,
Clerk.

[SEAL]

AGREEMENT.

Philadelphia and Reading Railway Company

with

Charles H. Coster and Francis Lynde Stetson, Purchasers.

This Agreement, Made this eighteenth day of November, 1896, by and between *Philadelphia and Reading Railway Company*, a corporation organized and existing under the laws of the State of Pennsylvania (hereinafter called the Company), party of the first part, and *Charles H. Coster* and *Francis Lynde Stetson* (hereinafter called the Purchasers), parties of the second part, *Witnesseth as follows:*

Whereas, The parties of the second part were the purchasers of the property and franchises of The Philadelphia and Reading Railroad Company, situated in the State of Pennsylvania, at the foreclosure sale thereof on the twenty-third day of September, 1896, under and in pursuance of a judgment and decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, and under certain deeds of conveyance thereof, made, executed and delivered October 23d, 1896, one by The Pennsylvania Company for Insurances on Lives and Granting Annuities as trustee under a certain mortgage or deed of trust of The Philadelphia and Reading Railroad Company, called the General Mortgage, bearing date the third day of January, 1888, and the other by said The Philadelphia and Reading Railroad Company;

And Whereas, The Purchasers in accordance with the Act of Assembly in such case made and provided, and after

due notice, duly met for the purpose of organizing a new corporation upon the seventeenth day of November, 1896, at the Reading Terminal, Market and Twelfth Streets, in the city of Philadelphia, at 9.30 o'clock in the morning of that day;

And Whereas, Then and there, the party of the first part having been duly organized as such new corporation, the parties of the second part did tender and deliver to it a deed of conveyance of property and franchises formerly of The Philadelphia and Reading Railroad Company, which deed of conveyance was delivered to and accepted by the party of the first part upon the express condition and agreement that it would enter into and execute with the parties of the second part the covenants and conditions of this agreement then and there exhibited to the said corporators;

Now, therefore, in consideration of the premises and of the mutual promises and agreements hereinafter contained, the said parties do hereby promise and agree as follows, to wit:—

First.

1. The Company will forthwith issue and deliver to the Purchasers, jointly and not severally, or to their survivors or successors, or upon their order, certificates for 399,993 shares of its fully paid and non-assessable stock.

2. The Company will forthwith make and execute, and cause to be recorded, its mortgage securing a present issue of $20,000,000 of bonds, and $10,000,000 additional bonds, to be issued only as provided in such mortgage, and will make and execute and cause to be certified and delivered to the Purchasers, jointly and not severally, and to their survivors and successors, or upon their order, $20,000,000 of such bonds first to be issued; such bonds and mortgage to be substantially of the character and description set forth in the printed form heretofore submitted to the Company.

3. The Company from time to time, on demand of the Purchasers, will pay to them or to their order all such sums

as they or either of them shall have incurred or may hereafter incur for expenses in and about the operation of the railroad, property and franchises transferred by said deed over and above the net receipts applicable thereto from the acquisition thereof by the said Purchasers, and will indemnify and hold harmless the Purchasers, and each of them, from and against any and all costs, expenses, liabilities and charges whatsoever incurred, or which may be incurred by the Purchasers, or either of them, in connection with such operation or management thereof, or by reason of any acts by them done or suffered to be done thereunder.

SECOND.

4. The Purchasers, from time to time, will make or cause to be made conveyances and assignments to the Company suitable and sufficient to invest it with the title to all of the rights, property and franchises described in the said deed which the said purchasers now have or hereafter may acquire therein or thereto, so as to enable the Company to have, enjoy and possess all of the rights, powers and privileges, and to become the owner of all and singular the railroads, properties and franchises described in the deed of said Purchasers, so far as they have acquired, or hereafter shall acquire, the same, or any part thereof.

THIRD.

5. The Company and the Purchasers, from time to time, in all particulars, will co-operate with and assist each other in fully accomplishing the purposes of said deed and of this agreement, which at any and all times may be modified, extended or enlarged by the agreement of the parties hereto.

In Witness Whereof, The Company, by the authority of its board of directors, each and every of its stockholders consenting thereto, has caused these presents to be executed and delivered by its president under its corporate seal, attested by its secretary; and the Purchasers have hereunto

set their hands and seals, the day and year first above mentioned.

PHILADELPHIA AND READING RAILWAY COMPANY,

By

J. S. HARRIS,
President.

[SEAL]

Attest:

W. R. TAYLOR,
Secretary.

C. H. COSTER,
FRANCIS LYNDE STETSON,
Purchasers.

The undersigned, stockholders of the Philadelphia and Reading Railway Company, hereby assent to and approve of the foregoing agreement.

J. S. HARRIS,
THOMAS McKEAN,
JNO. LOWBER WELSH,
GEO. C. THOMAS,
GEO. F. BAER,
FRANCIS LYNDE STETSON,
C. H. COSTER.

DEED.

CHARLES H. COSTER AND FRANCIS LYNDE STETSON TO THE PHILADELPHIA AND READING COAL AND IRON COMPANY. DATED NOVEMBER 18TH, 1896.

THIS INDENTURE, Made this eighteenth day of November, in the year one thousand eight hundred and ninety-six, between *Charles Henry Coster and Emily P.* his wife, of Tuxedo, Orange County, New York, and *Francis Lynde Stetson and Elizabeth R.* his wife, of the city, county and State of New York, parties of the first part, and *The Philadelphia and Reading Coal and Iron Company*, a corporation of the State of Pennsylvania, party of the second part:

WHEREAS, The parties of the first part were the purchasers of the property of The Philadelphia and Reading Coal and Iron Company at the foreclosure sale thereof, on the twenty-third day of September, 1896, under and in pursuance of a judgment and decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, and under certain deeds of conveyance thereof, made, executed and delivered October 23d, 1896, one by The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under a certain mortgage or deed of trust of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, called the General Mortgage, bearing date the third day of January, 1888, and the other by said The Philadelphia and Reading Coal and Iron Company, which deeds, dated as aforesaid, were duly recorded in the office of the recorder of deeds of the several counties wherein the property therein mentioned is situate:

AND WHEREAS, After careful appraisement of the several properties embraced in the said deeds of conveyance and hereinafter conveyed it has been ascertained and determined, and is agreed and understood by and between the

parties hereto, that the fair value of all such properties now exceeds $100,000,000, exclusive of the prior liens and obligations now existing thereon and in respect thereof;

And Whereas, The parties of the first part did also purchase, and now own and possess, certain claims or demands for an aggregate principal sum exceeding $69,000,000 formerly of The Philadelphia and Reading Railroad Company against the party of the second part, as follows, to wit:—

(1.) A mortgage bond of the party of the second part, dated July 1st, 1874, for the sum of	$30,000,000 00
(2.) A mortgage bond of the party of the second part, dated December 28th, 1876, for the sum of	10,000,000 00
(Subject to all prior charges and claims against said two mortgage bonds.)	
(3.) Loan account, representing cash advances	24,879,336 16
(4.) Current business account, approximating	4,300,000 00

And Whereas, It is the desire and intention of the parties hereby to vest in and to transfer to the party of the second part the titles to the several properties hereinafter described, free and discharged from the four claims before mentioned, which four claims (subject to a prior pledge of said two mortgage bonds) are hereby transferred to the party of the second part;

Now therefore, in consideration of the premises and of the execution and expected performance of a certain agreement of even date herewith, made, executed and delivered by the party of the second part to the said Charles H. Coster and Francis Lynde Stetson, and of the sum of one dollar to them in hand paid, the receipt whereof is hereby acknowledged and confessed, the parties of the first part have granted, bargained, sold, aliened, released, remised and confirmed, and by these presents do grant, bargain, sell, alien, release, remise and confirm unto said The Philadelphia and Reading Coal and Iron Company and its successors and assigns forever:—

First.—All and singular the coal lands, coal leases, iron-ore lands, furnace properties and other real estate; and also

all railroads and all branches, extensions, sidings and turnouts of any railroad belonging to said The Philadelphia and Reading Coal and Iron Company upon January 3d, 1888, or at any time thereafter, or now in any manner acquired or held by or for its benefit or in trust for it; and also all lands, coal leases, iron-ore leases, mines, collieries, breakers, engines, workshops, machinery, offices, buildings, improvements, tenements and hereditaments by the said Coal and Iron Company owned upon January 3d, 1888, or thereafter in any manner acquired by it or for its benefit or in trust for it; and all yards, depots and wharves, including all right, title and interest of the said Coal and Iron Company or the Receivers thereof in such yards, depots and wharves; and all locomotives, tenders, coal cars and carriages, and all other engines, cars, rolling stock, tools, implements, horses, mules and materials; and also all estate, right, title, interest, property claim and demand of every nature and kind whatsoever of the Coal and Iron Company in such property; together with certain shares of capital stock of other corporations; all as specified in the said above-mentioned deeds of October 23d, 1896, to Coster and Stetson, and therein designated "The Second Parcel;" subject, however, to the prior pledges, mortgages and liens upon the said property or any part thereof, so far as applicable thereto, as mentioned in said deeds; reference being hereby made to the said several deeds and to the records thereof for the further specification and identification of the property hereby granted and conveyed, or intended so to be;

Together with all the property, real, personal and mixed of every character and description, and any and all beneficial interest therein, formerly acquired by The Philadelphia and Reading Coal and Iron Company or by the Receivers of The Philadelphia and Reading Coal and Iron Company in the course of the operation and management of the same, or to which, or to any beneficial interest in which, the parties of the first part as purchasers at said foreclosure sale of The Philadelphia and Reading Coal and Iron Company are or may become entitled; including all materials and sup-

plies and other property, rights, equity and equities of redemption in which the said parties of the first part, as such purchasers as aforesaid have or can have any interest whatever;

But excepting from the grant and conveyance of this instrument any and all property heretofore conveyed or transferred under the powers reserved in said General Mortgage, and excepting also all cash and securities received or held in consideration of the release of any such property;

And also excepting all bills and accounts receivable and cash (all of which are hereby reserved by the purchasers).

And excepting also the following leases and contracts which the parties of the first part hereto have elected and do elect not to assume or adopt, to which several contracts of the respective dates hereinafter stated The Philadelphia and Reading Coal and Iron Company and the several persons or corporations hereinafter named respectively were parties, viz.:—

(1.) The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company, Edward M. Paxson, Joseph S. Harris and John Lowber Welsh, Receivers; Frederic P. Olcott *et al.*, committee; Finance Company of Pennsylvania and the Pennsylvania Warehousing and Safe Deposit Company, dated June 18th, 1895.

(2.) New York Central and Hudson River Railroad Company, the Geneva and Lyons Railroad Company, the Syracuse, Geneva and Corning Railroad Company, the Corning, Cowanesque and Antrim Railway Company, Fall Brook Coal Company, the Jersey Shore, Pine Creek and Buffalo Railway Company, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, dated February 4th, 1882.

To Have and to Hold the several coal lands, coal leases, iron-ore lands, furnace properties and other estate, real and personal, hereby granted or mentioned, or intended so to be, with the appurtenances, unto said The Philadelphia and

Reading Coal and Iron Company, its successors and assigns, forever.

Second.—Also all the right, title and interest of the parties of the first part, or either of them, in and to the following mortgage bonds now pledged as security for the payment of the so-called sinking fund loan of 1892 of The Philadelphia and Reading Railroad Company, to wit: Seven per cent. mortgage bonds of the Preston Coal and Improvement Company for the aggregate principal sum of $1,087,000; six per cent. mortgage bonds of the Tremont Coal Company for $900,000 and eight per cent. mortgage bonds of the Mammoth Vein Coal and Iron Company for $209,000.

Subject nevertheless, to the prior liens and incumbrances, so far as they respectively attach to the premises hereby conveyed, or any part thereof, as provided in the said deed of The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, to the said Charles Henry Coster and Francis Lynde Stetson, bearing date the twenty-third day of October, 1896;

And subject also to all the liabilities and obligations of every kind and nature whatsoever which have been incurred in any way by the said Charles Henry Coster and Francis Lynde Stetson from the time they acquired the title to the said granted premises or as a condition of the acquisition thereof, all of which, as part of the consideration of this grant, the party of the second part hereby assumes and agrees to pay and perform.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals, this eighteenth day of November, 1896.

C. H. COSTER, [SEAL]
EMILY PELL COSTER, [SEAL]
FRANCIS LYNDE STETSON. [SEAL]
ELIZABETH R. STETSON. [SEAL]

Signed, sealed and delivered
in presence of:
WM. H. BRUDER.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.*

On the twenty-third day of November, 1896, before me, the subscriber, a notary public for the city and county of New York, personally appeared the above-named Charles Henry Coster and Emily P. his wife, and Francis Lynde Stetson and Elizabeth R. his wife, who severally and in due form of law acknowledged the foregoing deed to be their act and deed, to the end that the same might be recorded as such. The said Emily P. Coster and Elizabeth R. Stetson, both being of full age and by me examined separate and apart from their said husbands, and the contents of the foregoing deed being first made fully known to them, declared that they did voluntarily and of their own free will and accord seal, and as their act and deed deliver the same without any coercion or compulsion of their said husbands.

Witness my hand and official seal the day and year aforesaid.

[SEAL]

WM. H. BRUDER,
Notary Public (201),
New York County.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.*

I, Henry D. Purroy, clerk of the city and county of New York and also clerk of the Supreme Court for the said city and county, the same being a court of record, do hereby certify that William H. Bruder, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I hereunto set my name and affix the seal of the said court and county, the twenty-third day of November, 1896.

HENRY D. PURROY,
Clerk.

[SEAL]

AGREEMENT.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY

with

CHARLES H. COSTER AND FRANCIS LYNDE STETSON, PURCHASERS.

THIS AGREEMENT, Made this eighteenth day of November, one thousand eight hundred and ninety six, by and between *The Philadelphia and Reading Coal and Iron Company*, a corporation organized and existing under the laws of the State of Pennsylvania hereinafter called the Company), party of the first part, and *Charles H. Coster* and *Francis Lynde Stetson* (hereinafter called the Purchasers), parties of the second part, *Witnesseth as follows:*—

WHEREAS, The parties of the second part were the purchasers of the property of The Philadelphia and Reading Coal and Iron Company, at the foreclosure sale thereof on the twenty-third day of September, 1896, under and in pursuance of a judgment and decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, and under certain deeds of conveyance thereof made, executed and delivered October 23d, 1896, one by the Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under a certain mortgage or deed of trust of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, called the General Mortgage, bearing date the third day of January, 1888, and the other by said The Philadelphia and Reading Coal and Iron Company;

AND WHEREAS, The parties of the second part have this day tendered and delivered to the Company, the party of the first part, a deed of conveyance of property formerly of The Philadelphia and Reading Coal and Iron Company, which deed of conveyance was delivered to and accepted by the party of the first part upon the express condition and agree-

ment that it would enter into and execute with the parties of the second part the covenants and conditions of this agreement;

Now, therefore, in consideration of the premises and of the mutual promises and agreement hereinafter contained, the said parties do hereby promise and agree as follows, to wit:—

First.—When and as requested by the Purchasers or by their assigns (either individual or corporate), by them from time to time designated, the Company will join in the execution, as co-obligor, of bonds for the aggregate principal sum of one hundred and thirty-five million dollars, bearing interest at the rate of four per cent. per annum, payable semi-annually, both principal and interest being payable in gold coin of the United States of the present standard of weight and fineness, and the principal payable on the first day of January, 1997:

Provided, That (1) not more than fifty-four million dollars of such bonds shall be presently issued for the general purposes of the Purchasers or of their assigns; that (2) of the remainder of such authorized issue, sixty-five million five hundred and fifty thousand dollars shall be used to acquire various outstanding bonds of The Philadelphia and Reading Railroad Company including the collateral sinking fund loan of the Railroad Company of 1892, for the principal sum of one million seven hundred and seventy-four thousand dollars, which loan the Coal and Iron Company hereby assumes and agrees to pay), and the outstanding bonds of The Philadelphia and Reading Coal and Iron Company, approximately amounting to the principal sum of twelve million five hundred thousand dollars; that (3) of the remainder of said authorized issue, twenty million dollars shall be reserved and used for the acquisition of property ultimately to be devoted to the security of such bonds; and that (4) the Purchasers or their assigns shall make, execute and deliver a mortgage or deed of trust, granting, conveying and pledging, as security for the payment of all

such bonds, assets of the Purchasers or their assigns which shall have been acquired by the Purchasers under or in pursuance of the said proceedings for the foreclosure of the General Mortgage of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, it being intended to include under such mortgage (either directly or by collateral trust) substantially all the property of The Philadelphia and Reading Railroad Company, subject to such deductions therefrom or changes therein as the Purchasers or their assigns, for business reasons, may decide not to include under such mortgage.

Second.—The Company will also join in said mortgage last above proposed, and will grant, pledge and convey thereunder, as additional security for the bonds above proposed, all of its property and franchises of every name and nature.

Third.—In case the property or assets of the Company shall be used or taken for the payment or discharge of any obligation of any kind under the said bonds or mortgage, the Company, to the extent of such payment or appropriation of its property in excess of one-half of the aggregate sum payable under such bonds, shall have a claim for the amount of such excess against the party joining with it in the execution of said bonds and the mortgage securing the same.

In Witness Whereof, The parties hereto have caused these presents to be executed the day and year first above written.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,

By

J. S. HARRIS,
President.

Attest:

F. P. KAERCHER,
Secretary.

[SEAL]

C. H. COSTER, [L. S.]

FRANCIS LYNDE STETSON [L. S.]

CIRCULAR ANNOUNCING SURRENDER OF PROPERTY.

JOSEPH S. HARRIS, EDWARD M. PAXSON, JOHN LOWBER WELSH, RECEIVERS OF THE PHILADELPHIA AND READING RAILROAD COMPANY.

Office of the Receivers, Reading Terminal.

PHILADELPHIA, November 18th, 1896.

The undersigned Receivers of The Philadelphia and Reading Railroad Company will at midnight of November 30th, 1896, deliver to the Philadelphia and Reading Railway Company possession of all the railroads and franchises of The Philadelphia and Reading Railroad Company, excepting such leasehold and other estates as the purchasers shall have elected not to adopt or assume.

All business of the Receivers of The Philadelphia and Reading Railroad Company up to and including that for the month of November, 1896, and all reports covering the same, should be accounted for and sent, and all moneys appertaining to same should be remitted on account of the Philadelphia and Reading Railway Company.

As the undersigned will cease to operate said railroad at midnight of November 30th, 1896, the employment by them of all officers, agents and employees will then terminate.

JOSEPH S. HARRIS,
EDWARD M. PAXSON,
JOHN LOWBER WELSH,
Receivers.

CIRCULAR ANNOUNCING SURRENDER OF PROPERTY.

JOSEPH S. HARRIS, EDWARD M. PAXSON, JOHN LOWBER WELSH, RECEIVERS OF THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Office of the Receivers, Reading Terminal.

PHILADELPHIA, November 18th, 1896.

The undersigned Receivers of The Philadelphia and Reading Coal and Iron Company, pursuant to the direction and request of Charles S. Coster and Francis Lynde Stetson, purchasers at the date of sale, will, at midnight of November 30th, 1896, deliver to said Company possession of all the property and franchises heretofore held by them.

After that date all business of the Receivers up to and including that for the month of November, 1896, and all reports covering the same, should be accounted for and sent, and all moneys appertaining to same should be remitted as heretofore either to The Philadelphia and Reading Coal and Iron Company or to the Finance Company of Pennsylvania, commercial agents, for the account of The Philadelphia and Reading Coal and Iron Company.

As the undersigned will cease to operate said property at midnight of November 30th, 1896, the employment by them of all officers, agents and employees will then terminate.

JOS. S. HARRIS,
EDWARD M. PAXSON,
JOHN LOWBER WELSH,
Receivers.

REQUEST OF CHARLES H. COSTER AND FRANCIS LYNDE STETSON TO THE RECEIVERS TO SURRENDER PROPERTY.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sessions, 1895. No. 9.

IN EQUITY.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.

To Messrs. Joseph S. Harris, Edward M. Paxson, J. Lowber Welsh, Receivers.

GENTLEMEN:—We refer you to the decree of confirmation herein, entered in this court on the third day of October, 1896, and to the provisions thereof, as follows, to wit:—

"On exhibition of the deed executed and delivered by the trustee as herein ordered, and upon the written request of the grantees thereunder, the Receivers of this court are authorized, directed and required to let the said purchasers and their assigns into possession of the premises conveyed; and the Receivers, or any party in this cause having possession thereof, shall deliver such property over to the purchasers or their assigns together with any and all income, proceeds of income, bills and accounts receivable, cash and other property, acquired or received by the Receivers in the management or operation of the mortgaged premises, to be

embraced in the conveyance thereof or pertaining thereto; and also any and all property appurtenant to the premises and acquired for use in connection with or for the purposes or business of said companies, invested in or standing in the name of the said Receivers or to which the said Receivers in any manner have acquired title."

And we herewith exhibit to you the following deeds, to wit:—

I. The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, to Charles H. Coster and Francis Lynde Stetson, dated October 23d, 1896.

II. Charles H. Coster and Francis Lynde Stetson to Philadelphia and Reading Railway Company, dated 16th November, 1896.

III. Charles H. Coster and Francis Lynde Stetson, to The Philadelphia and Reading Coal and Iron Company, dated 18th November, 1896.

And we do hereby request that upon Monday, the thirtieth day of November, 1896, at 12 o'clock midnight, you, as Receivers, in pursuance of said decree, will let us, as the said purchasers mentioned in said decree, and the Philadelphia and Reading Railway Company and The Philadelphia and Reading Coal and Iron Company, as our assigns, respectively, into possession of the premises conveyed by the said deed to us from The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee, in the manner following, to wit: —

That at the said hour you will let the Philadelphia and Reading Railway Company into possession of the premises to it conveyed by our said deed No. II, and that you will let The Philadelphia and Reading Coal and Iron Company into possession of the premises mentioned and described in our said deed No. III, and that you will deliver to them respectively any and all income, proceeds of income, bills and accounts receivable, cash and other property, acquired or re-

ceived by you in the management or operation of the several parcels of the mortgaged premises so conveyed to them respectively; and to us all the other property mentioned and conveyed in the trustee's deed to us; excepting and excluding, however, from this demand and from such delivery all of the several leases and contracts specified in the said two deeds from us, which, as well as the leases and contracts concerning the five following properties, viz., Mine Hill and Schuylkill Haven Railroad Company, Catawissa Railroad Company, Little Schuylkill Navigation Railroad and Coal Company, including East Mahanoy Railroad Company and the Chestnut Hill Railroad Company, we have elected and do elect not to assume or adopt.

C. H. COSTER,
FRANCIS LYNDE STETSON,
Purchasers.

Dated NOVEMBER 24th, 1896.

REQUEST OF THE PHILADELPHIA AND READING RAILWAY COMPANY TO THE RECEIVERS TO SURRENDER PROPERTY.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sessions, 1895. No. 9.

IN EQUITY.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants.

TO MESSRS. JOSEPH S. HARRIS, EDWARD M. PAXSON, J. LOWBER WELSH, RECEIVERS.

GENTLEMEN:—Referring to a request dated November 24th, 1896, addressed to you by Charles H. Coster and Francis Lynde Stetson, purchasers, the undersigned, the Philadelphia and Reading Railway Company, the grantee of the said purchasers named in their deed No. II., dated 16th November, 1896, as grantee and assignee of the said Coster and Stetson, do hereby request you to deliver to it the possession of the premises in said deed mentioned, and also any and all income, proceeds of income, bills and accounts receivable, cash and other property, acquired or received by you in the management or operation of the several parcels of the mortgaged premises mentioned in said deed No. II., subject to the exceptions contained in the said request of the said purchasers.

PHILADELPHIA AND READING RAILWAY COMPANY,

By

J. S. HARRIS,
President.

[SEAL]

Attest:

W. R. TAYLOR,
Secretary.

Dated NOVEMBER 24th, 1896.

REQUEST OF THE PHILADELPHIA AND READING COAL AND IRON COMPANY TO THE RECEIVERS TO SURRENDER PROPERTY.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sessions, 1895. No. 9.

IN EQUITY.

The Pennsylvania Company for Insurances on Lives and Granting Annuities, Complainant,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company and others, Defendants

TO MESSRS. JOSEPH S. HARRIS, EDWARD M. PAXSON, J. LOWBER WELSH, RECEIVERS.

GENTLEMEN:—Referring to a request dated November 24th, 1896, addressed to you by Charles H. Coster and Francis Lynde Stetson, purchasers, the undersigned, The Philadelphia and Reading Coal and Iron Company, the grantee of the said purchasers named in their deed No. III., dated 18th November, 1896, as grantee and assignee of the said Coster and Stetson, do hereby request you to deliver to it the possession of the premises in said deed mentioned, and also any and all income, proceeds of income, bills and accounts receivable, cash and other property, acquired or received by you in the management or operation of the several parcels of the mortgaged premises mentioned in said deed No. III, subject to the exceptions contained in the said request of the said purchasers.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,

By

J. S. HARRIS,
President.

[SEAL]

Attest:

F. P. KAERCHER,
Secretary.

Dated NOVEMBER 24th, 1896.

BILL OF SALE.

Charles H. Coster and Francis Lynde Stetson

to

The Philadelphia and Reading Coal and Iron Company.

OF ALL BILLS AND ACCOUNTS RECEIVABLE AND CASH.

WHEREAS, Pursuant to the decrees of the Circuit Court of the United States for the Eastern District of Pennsylvania entered in a certain suit therein pending to No. 9, April Sessions, 1895, wherein The Pennsylvania Company for Insurances on Lives and Granting Annuities was complainant and The Philadelphia and Reading Coal and Iron Company and others were defendants, the said The Pennsylvania Company for Insurances on Lives and Granting Annuities, by its deed dated October 23d, 1896, granted, conveyed, assigned and transferred unto Charles Henry Coster and Francis Lynde Stetson, as joint tenants, and not as tenants in common, among other things, all property, real and personal, of every character and description or any beneficial interest therein acquired by the Receivers of the said The Philadelphia and Reading Coal and Iron Company in the course of the operation and management of the property and business of the said Coal and Iron Company or pertaining thereto, or to which, or any beneficial interest in which, they, the said Receivers, were entitled or might become entitled, including all income, proceeds of income, bills and accounts receivable, cash, materials, supplies and other property, received by the said Receivers in the management or operation of the said premises or pertaining thereto, and any and all property appurtenant thereto or pertaining thereto and acquired for use with or for the purposes of the said property or business of said Coal and Iron Company in connection therewith and vested in or standing in the

name of the said Receivers or to which the said Receivers in any manner should have acquired title, at the time of delivery to the purchasers of such property; all equipment and all coal in possession of said Receivers at the time of such delivery to be delivered as part of and in connection with the property and premises in connection with which it was acquired or received by said Receivers;

And Whereas, Afterwards the said Charles Henry Coster and Francis Lynde Stetson, by their deed dated November 18th, 1896, granted and conveyed, assigned and transferred unto the said The Philadelphia and Reading Coal and Iron Company, all the property, real, personal and mixed, of every character and description, and any and all beneficial interest therein, formerly acquired by The Philadelphia and Reading Coal and Iron Company or by the Receivers of The Philadelphia and Reading Coal and Iron Company in the course of the operation and management of the same, or to which, or to any beneficial interest in which, they as purchasers as aforesaid, were or might become entitled including all materials and supplies and other property, rights, equity and equities of redemption in which they, as purchasers as aforesaid, had or could have any interest whatever; but excepting from the said grant, conveyance, assignment and transfer, among other things, all bills and accounts receivable and cash, all of which were therein and thereby reserved by the said purchasers.

And Whereas, The objects and purposes for which the said last-mentioned exception and reservation were made have now been fully accomplished and satisfied, and upon an accounting it has been ascertained and determined that the said The Philadelphia and Reading Coal and Iron Company is now entitled to an assignment and transfer of the said bills and accounts receivable remaining uncollected and of the balance of cash remaining on hand, so as aforesaid excepted and reserved.

Now, therefore, Know all Men by these Presents, That in consideration of the premises and of the sum of one dollar ($1) to each of them in hand paid, the receipt whereof is hereby acknowledged, the said Charles Henry Coster and Francis Lynde Stetson have sold, and do hereby sell, assign, transfer and set over unto The Philadelphia and Reading Coal and Iron Company, its successors and assigns, all the right, title and interest which remains or may remain vested in them, of, in and to any and all bills and accounts receivable and cash so excepted by and reserved unto them as above recited and mentioned.

In Witness Whereof, We have hereunto set our hands and seals, this first day of December, A. D. 1896.

C. H. COSTER. [SEAL]
FRANCIS LYNDE STETSON. [SEAL]

In presence of:
A. H. GILLARD.
JAMES F. LANG.

BILL OF SALE.

Charles H. Coster and Francis Lynde Stetson to Reading Company.

OF SUNDRY ACCOUNTS FOR ADVANCES TO LEASED AND CONTROLLED COMPANIES SOLD UNDER DECREE OF CIRCUIT COURT OF THE UNITED STATES OF MAY 1ST, 1896.

WHEREAS, In compliance with the directions of the decree of May 1st, 1896, of the Circuit Court of the United States for the Eastern District of Pennsylvania, in No. 9, April Sessions, 1895, The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee of the General Mortgage of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, did, on the twenty-third day of September, 1896, at the time and place fixed in said decree, sell at public auction the property, premises and franchises of every description described in said General Mortgage, or by said decree adjudged to have become subject thereto, of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company to Charles H. Coster and Francis Lynde Stetson for the sum of sixteen million dollars ($16,000,000), in which property were included the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to the following accounts for advances made by the said The Philadelphia and Reading Railroad Company to the leased and controlled companies named, as in and by the report of said trustee, duly filed in the suit above mentioned, will fully and at large appear:—

Reading and Columbia Railroad Company	$111,962 39
Stony Creek Railroad Company	423,512 84
Perkiomen Railroad Company	875,928 24
Philadelphia, Newtown and New York Railroad Company, account construction	29,680 08
Atlantic City Railroad Company	438,288 20

Northeast Pennsylvania Railroad Company	$128,270 04
Philadelphia and Chester Valley Railroad Company	56,255 97
Rupert and Bloomsburg Railroad Company	36,963 04
Middletown and Hummelstown Railroad Company	36,527 90
Philadelphia and Northern Railroad Company	58,330 71
Gettysburg and Harrisburg Railway Company	129,499 63
Delaware River Ferry Company of New Jersey	80,222 06
Philadelphia and Reading Terminal Railroad Company	2,545,491 77
Catasauqua and Fogelsville Railroad Company	50,544 00
Chester and Delaware River Railroad Company	147,174 14
Camden County Railroad Company	84,074 34
Tamaqua, Hazleton and Northern Railroad Company	63,349 37
Philadelphia and Frankford Railroad Company	21,852 15
Port Reading Railroad Company	93,351 02
Philadelphia Belt Line Railroad Company	222,821 18
Langhorne and Bristol Railroad Company	131 32
Dutchess County Railroad Company	21,538 03
Philadelphia, Reading and New England Railroad Company	563,774 27
Colebrookdale Railroad Company	71,872 99
Pickering Valley Railroad Company	417,213 88
Schuylkill Water Company	57,277 47
Twelfth Street Market Company	14,598 75
Preston Coal and Improvement Company	304,135 00
Tremont Coal Company	201,000 00
Mammoth Vein Coal and Iron Company	64,440 00
Terminal Market and Cold Storage	48,470 38
River Front Railroad Company	79,468 27
Catawissa Railroad Company, permanent improvements	286,516 67
East Pennsylvania Railroad Company, permanent improvements	9,844 65
Mine Hill and Schuylkill Haven Railroad Company, permanent improvements	55,401 40
Catawissa Railroad, account Newberry Extension	423,736 05
Schuylkill and Lehigh Railroad Company, permanent improvements	26,604 93
North Pennsylvania Railroad Company, permanent improvements	23,456 76
East Mahanoy Railroad Company, permanent improvements	8,742 59
	$8,112,322 68

LESS CREDITS.

Philadelphia, Harrisburg and Pittsburgh Railroad Company	$719,429 49	
Chestnut Hill and Jenkintown Railroad Company	538 86	
Allentown Railroad Company	22,731 60	
Shamokin, Sunbury and Lewisburg Railroad Company	614,790 70	
		1,357,490 65
Total		$6,754,832 03

AND WHEREAS, After due notice and hearing the Circuit Court of the United States did on the third day of October, 1896, duly confirm the sale so made by the said

trustee to the said Charles H. Coster and Francis Lynde Stetson, and directed the said trustee to make and deliver deeds of conveyance conveying the property sold to the said purchasers and their assigns;

And Whereas, The said Circuit Court of the United States did further order and decree that by way of further assurance and confirmation of title to such purchasers or their assigns the said Philadelphia and Reading Railroad Company and the said Philadelphia and Reading Coal and Iron Company, mortgagors, each by its proper officers and under its corporate seal, should, upon request of said purchasers or their assigns, join in said deeds to be executed by the trustee, or if so requested, should sign, seal, execute, acknowledge and deliver to such purchasers or their assigns separate deeds of conveyance, transfer, release and further assurance of all the railroad, property and franchises sold under the decree of this court, so as fully and completely to transfer to and vest in the said purchasers and their assigns the full legal and equitable title to all such railroads, property and franchises sold or intended to be sold;

And Whereas, Afterwards, by its deed dated October 23d, 1896, the said The Pennsylvania Company for Insurances on Lives and Granting Annuities did, pursuant to the said decree, grant and convey the premises so sold unto the said Charles Henry Coster and Francis Lynde Stetson as purchasers, and the said The Philadelphia and Reading Railroad Company, also pursuant to the provisions of the said decree, did, by its assignment in writing bearing the same date, sell, transfer, assign and set over unto the said Charles Henry Coster and Francis Lynde Stetson, jointly and not severally, and to the survivor of them, and the executors and administrators of such survivor forever, the right, title and interest of The Philadelphia and Reading Railroad Company of, in and to the said accounts against the companies named in the above-recited schedule, and each of them.

Now Know all Men by these Presents, That the said Charles Henry Coster and Francis Lynde Stetson, purchasers as aforesaid, in consideration of the sum of one dollar ($1) to each of them in hand paid, have sold and do hereby sell, assign, transfer and set over unto the Reading Company, its successors and assigns, forever, all their right, title and interest of, in and to the said accounts against the companies named in the foregoing schedule, and each of them.

In Witness Whereof, We have hereunto set our hands and seals, this first day of December, A .D. 1896.

C. H. COSTER. [SEAL]
FRANCIS LYNDE STETSON. [SEAL]

In presence of:
A. H. GILLARD.
JAMES F. LANG.

DEED.

Charles H. Coster and Francis Lynde Stetson and J. P. Morgan & Co. to Reading Company.

This Indenture, Made this twenty-third day of December, 1896, between *Charles Henry Coster*, of Tuxedo, New York, and *Francis Lynde Stetson*, of the City of New York, parties of the first part, and *J. P. Morgan & Co.*, a copartnership of the City of New York (hereinafter called the Managers), parties of the second part, and the *Reading Company* (heretofore known as the Excelsior Enterprise Company and also as the National Company), a corporation of the State of Pennsylvania, party of the third part.

Whereas, The said Charles Henry Coster and Francis Lynde Stetson parties of the first part, were the purchasers of property of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company at the foreclosure sale thereof on the twenty-third day of September, 1896, under and in pursuance of a judgment and decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, and under certain deeds of conveyance thereof made, executed and delivered October 23d, 1896, one by The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under a certain mortgage or deed of trust of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, called the General Mortgage, bearing date the third day of January, 1888, and the other by said The Philadelphia and Reading Coal and Iron Company, which deeds, dated as aforesaid, were duly recorded in the office of the recorder of deeds of the several counties wherein the property therein mentioned is situate;

And Whereas, The said parties of the first part heretofore, by their two several deeds of conveyance duly de-

livered to the respective grantees therein named, to wit, to the Philadelphia and Reading Railway Company, on November 17th, 1896, and to The Philadelphia and Reading Coal and Iron Company on November 18th, 1896 (which deeds have been duly recorded), did grant and convey to said two companies severally and respectively certain specified portions of the premises included under said General Mortgage, and by the said Coster and Stetson so purchased at the said foreclosure sale thereunder;

And Whereas, Such purchases and such conveyances were made under and in pursuance of the request of the parties of the second part hereto, as managers under a certain plan and agreement for the reorganization of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, dated December 14th, 1895, and in intended compliance with and promotion of the provisions of said plan and agreement;

And Whereas, It is the desire and intention of the parties hereto to the extent and in the manner hereinafter indicated the party of the third part shall acquire the property and franchises so purchased by the said Coster and Stetson at the said foreclosure sale on the twenty-third day of September, 1896, but not including any parcels thereof thereafter rejected by them, or any parcels thereof which, as above stated, have been heretofore conveyed to the said Philadelphia and Reading Railway Company and The Philadelphia and Reading Coal and Iron Company; and also the property and assets by them purchased at the Receivers' sale thereof made on the twenty-third day of September, 1896, by Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, as Receivers in the cause above entitled, and in pursuance of the said judgment and decree entered therein on May 1st, 1896; and also all the other assets and property hereinafter mentioned;

And Whereas, After careful appraisement of all the several properties intended to be conveyed hereunder, and hereinafter conveyed, it has been ascertained and determined, and it is agreed and understood by and between the parties that the fair value of all such properties hereby conveyed will exceed $255,000,000 when freed from, and clear of, the prior liens and obligations, amounting approximately to the aggregate principal sum of $65,000,000, now existing thereon and in respect thereof, and subject to such prior liens and obligations now exceeds $190,000,000.

Now, therefore, in consideration of the premises and of the execution and the expected performance of a certain agreement of even date herewith, made, executed and delivered by the party of the third part to the said parties of the first part and the parties of the second part, and of the sum of one dollar to the parties of the first part and the parties of the second part in hand paid, the receipt whereof is hereby acknowledged and confessed, the parties of the first part and of the second part have granted, bargained, sold, aliened, released, remised and confirmed, and have assigned, transferred and set over, and by these presents do grant, bargain, sell, alien, release, remise and confirm, and do assign, transfer and set over unto the said party of the third part, the said Reading Company, and to its successors and assigns, forever;

All and singular their right, title and interest in and to the following estates, lands, properties, rights, privileges and franchises and bonds and shares of capital stock, viz.:

First.—All real estate of every name and description formerly of The Philadelphia and Reading Railroad Company, to the extent that, and as the same is described in several certain deeds thereof of even date herewith from the parties of the first part to the party of the third part, and recorded respectively in the several counties in the State of Pennsylvania in which the said real estate is situated; but not including any right of way, depots or yards

formerly of the said Railroad Company, or formerly of any railroad by it held under lease, or any real estate appertaining to the railroad thereof subject, however, to any and all liens, incumbrances and charges thereon.

Second.—All locomotives, tenders, passenger cars, baggage cars, freight cars, coal cars, and all other engines, cars, carriages and rolling stock formerly of The Philadelphia and Reading Railroad Company; subject however, to all liens and charges thereon in the nature of car trusts or otherwise.

Third.—All steam colliers, vessels, canal boats and barges formerly of The Philadelphia and Reading Railroad Company, including specifically those enrolled in the office of the Collector of Customs of the Port of Philadelphia as having heretofore been transferred directly to the Reading Company by Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers, such transfers having been made at the request of the parties of the first part hereto.

Fourth.—Certain bonds of the several corporations, and for the several aggregate principal sums next hereafter stated, viz.:—

Philadelphia and Reading Railway Company	$20,000,000
Camden County Railroad Company	39,000
Gettysburg and Harrisburg car trusts	18,000
People's Railway Company	36,000
Perkiomen Railroad Company	161,100
Philadelphia, Reading and Pottsville Telegraph Company	200,000
Philadelphia and Chester Valley Railroad Company:—	
(*a*) Preferred	25,000
(*b*) Not preferred	47,000
Philadelphia, Harrisburg and Pittsburgh Railroad Company	1,472,000
Philadelphia, Newtown and New York Railroad Company	849,100
Reading and Columbia Railroad Company:—	
First mortgage	9,500
Second "	35,000
Debentures	1,000,000
Schuylkill and Lehigh Railroad Company	108,300
Tamaqua, Hazleton and Northern Railroad Company	300,000
Pickering Valley Railroad Company:—	
First mortgage loan	326,300

Colebrookdale Railroad Company:—	
Mortgage bonds	$587,400
Catawissa Railroad Company:—	
10 per cent. chattel mortgage bonds, 1868-1888	98,450
5 per cent. " " " 1880	24,500
7 per cent. debenture bonds, 1917	62,000
7 per cent. improvement mortgage bonds	500,000
Schuylkill Navigation Company:—	
Loan, 1872	1,685,090
" 1882	3,941,146
Improvement loan (loan of 1880)	228,000
Loan of 1895	1,181,000
Boat and car loans	1,320,050

Fifth.—Certain shares of capital stock of the several corporations next hereinafter named, for which proper certificates are herewith simultaneously delivered:—

I.

Shares of capital stock, being in each instance the entire outstanding capital stock of the company (other than such as shall be necessary to qualify directors):—

	Shares.	Par Value.
Philadelphia and Reading Railway Company	400,000	$20,000,000
Philadelphia and Reading Coal and Iron Company	160,000	8,000,000
Chester and Delaware River Railroad Company	800	40,000
Danville and Shamokin Railroad Company	5,000	250,000
Delaware River Ferry Company of New Jersey	5,000	500,000
Middletown and Hummelstown Railroad Company	3,500	175,000
Norristown Junction Railroad Company	400	20,000
Philadelphia and Frankford Railroad Company	10,000	500,000
Philadelphia, Reading and Pottsville Telegraph Company	390	19,500
Philadelphia and Reading Terminal Company	170,000	8,500,000
Philadelphia, Harrisburg and Pittsburgh Railroad Company	40,000	2,000,000
Port Reading Railroad Company	15,650	1,565,000
Rupert and Bloomsburg Railroad Company	1,000	50,000
Schuylkill and Lehigh Railroad Company	1,000	50,000
Slatington Railroad Company	4,000	20,000
Shamokin, Sunbury and Lewisburg Railroad Company	40,000	2,000,000
Tamaqua, Hazleton and Northern Railroad Company	6,000	300,000
Reading Iron Company	10,000	1,000,000

II.

Shares of capital stock, being in each instance more than one-half the entire outstanding capital stock of the company:—

	Shares.	Par Value.
Atlantic City Railroad Company:—		
(*a*) Preferred	19,055	$952,750
(*b*) Common	24,000	1,200,000
Allentown Railroad Company	21,528	1,076,400
Catasaqua and Fogelsville Railroad Company	10,165	254,125
Colebrookdale Railroad Company	5,630	281,500
Camden County Railroad Company	1,043	52,150
East Mahanoy Railroad Company	5,673	283,650
East Pennsylvania Railroad Company	17,577	878,850
Gettysburg and Harrisburg Railway Company	10,814	540,700
Northeast Pennsylvania Railroad Company	6,379	318,950
Pickering Valley Railroad Company	1,232	61,600
Philadelphia and Chester Valley Railroad Company:—		
(*a*) Preferred	4,102	205,100
(*b*) Common	9,089	454,450
Reading and Columbia Railroad Company	15,764	788,200

III.

Miscellaneous shares of capital stock:—

	Shares.	Par Value.
Catawissa Railroad Company:—		
(*a*) First preferred	228	$11,400
(*b*) Second preferred	310	15,500
Central Dock and Terminal Railway Company	1,854	185,400
Junction Railroad Company	1,723	86,150
Mine Hill and Schuylkill Haven Railroad Company	1,620	81,000
Mill Creek and Mine Hill Navigation and Railroad Company	1,927	48,175
Mt. Carbon and Port Carbon Railroad Company	776	38,800
North Pennsylvania Railroad Company	2,576	128,800
Philadelphia Belt Line, preferred	1,560	78,000
People's Railway Company of Pottsville	2,703	54,060
Schuylkill Valley Navigation and Railroad Company	1,246	62,300
Swede's Ford Bridge Company	360	9,000

Sixth.—Certain mortgages and ground rents formerly of The Philadelphia and Reading Railroad Company, viz.:—

Mortgages.	Location of Property.	Amount.
Rt. Rev. James F. Wood, in trust	North Manheim Township, Schuylkill County	$250 00
John F. Dewalt	Dauphin, Pa	129 00
Bank of Kentucky	Property in Pottsville	1,376 00
Harrisburg and Potomac Railroad Company	Warehouse, Shippensburg (Stewart)	13,000 00
Reading Rolling Mill Company	Reading, Pa	50,000 00
James Polhemus	Bridgewater Township, N.J.	6,500 00
Mrs. H. Louisa Moore	" " "	12,000 00
Chester and Delaware River Railroad Company	Right of way, real estate, &c.	200,131 84
A. J. Reach	Broad Street and Lehigh Avenue, Philadelphia	17,000 00
		$300,386 84

Ground Rents.	Location of Property.	Amount.
James Moon	CallowhillStreet,Philadelphia.	$2,333 33
People's Passenger Railway Company	" "	2,333 34
Hestonville, Mantua and Fairmount Passenger Railway Company	" "	6,533 33
People's Passenger Railway Company	" "	3,500 00
F. W. McDowell	Manayunk, Philadelphia	766 67
W. H. Harding	" "	7,983 33
Alexander L. Hodgson	Port Richmond, Philadelphia.	1,666 66
Sarah Entriken	" " "	3,300 00
Whelden & Son	Conshohocken, Pa	1,666 66
W. G. Harding	Manayunk, Philadelphia	6,000 00
		$36,083 32

Seventh.—Certain other property heretofore held by J. P. Morgan & Co.

(*a.*) Five hundred and twenty-five freight cars and fifteen hundred coal cars.

(*b.*) All right, title and interest in the steam tug "Catawissa," now building.

TO HAVE AND TO HOLD, the premises, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds hereby conveyed and assigned, or intended so to be, unto the Reading Company, its successor or successors and assigns forever;

Subject, however, to all the liens, charges and obligations thereon now existing or heretofore created; and subject also to all liabilities and obligations of every kind and nature whatsoever which in any way have been incurred by the said Charles Henry Coster and Francis Lynde Stetson from the time they acquired the title to such property, or as a condition of the acquisition thereof, and especially subject to all the conditions, obligations and reservations imposed by and contained in the decrees of the Circuit Court of the United States for the Eastern District of Pennsylvania, made and entered on the first day of May, 1896, and on the third day of October, 1896, in a certain cause pending in the said court, wherein The Pennsylvania Company for Insurances on Lives and Granting Annuities was complainant and The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and others were defendants; all of which liabilities and obligations of the said Charles Henry Coster and Francis Lynde Stetson, and all of which terms, conditions and reservations of the said decrees the party of the third part hereby assumes and agrees to pay and to perform as part of the consideration of this grant;

And subject also to all the liabilities and obligations of the said J. P. Morgan & Co., managers under the said plan and agreement dated December 14th, 1895, and all the terms and conditions of the said agreement of even date herewith; all of which liabilities, obligations, terms and conditions, being hereby imposed as a charge upon the property hereby conveyed, the party of the third part hereby assumes and agrees to do and perform as part of the consideration of this grant.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals, this 23d day of December, one thousand eight hundred and ninety-six.

C. H. COSTER, [L. S.]
FRANCIS LYNDE STETSON. [L. S.]
J. P. MORGAN & CO. [L. S.]

Signed, sealed and delivered
in presence of:
GEO. F BAER,
JNO. LOWBER WELSH.

Mr. Reynolds also offered in evidence compilation of the Acts of Pennsylvania, New York, and New Jersey, briefly summarizing the amounts of dual powers to mine, produce and transport anthracite coal, a part of which, for the purpose of convenience, having to do with the Philadelphia and Reading Railway Company, re-quote some brief paragraphs which were put in evidence by the Government from the annual report of the Philadelphia and Reading Railway Company, as follows:—

STATEMENT OF LEGISLATIVE POLICY OF PENNSYLVANIA, NEW YORK AND NEW JERSEY TOWARD COMBINATION OF ANTHRACITE PRODUCTION AND ANTHRACITE TRANSPORTATION INTERESTS.

Lehigh and Susquehanna Railroad.

In 1818 the Pennsylvania Legislature (Act of March 20th, 1818, 7 Sm. L., 86), granted Josiah White, George F. A. Hauto and Erskine Hazard, who owned large tracts of coal lands, certain rights to improve the navigation of the Lehigh River. Messrs. White, Hauto and Hazard transferred these rights to an association called the Lehigh Navigation Company. They conveyed their coal lands to an association called the Lehigh Coal Company. Those two associations amalgamated themselves into a single association called the Lehigh Navigation and Coal Company, which thereafter had the right to both mine and transport anthracite coal.

In 1822 the Pennsylvania Legislature (Act of February 13th, 1822, P. L., 21), reciting the foregoing rights and that the last mentioned company required additional funds to improve the navigation of the Lehigh River and further reciting that "It is, for reasons frequently repeated in preambles to Acts of this Legislature, the manifest interest of the Commonwealth to promote by all proper means an object so important to the State," made the association previously called the Lehigh Navigation and Coal Company into a

corporation with the name "The Lehigh Coal and Navigation Company," and vested all the lands and rights belonging to the older association in the corporation so created, and authorized the corporation "at any time within a year from the passage of this act, to commence a slack water navigation in the river Lehigh."

In 1837, the Pennsylvania Legislature (Act of March 13th, 1837, P. L., 53), authorized this new company to construct and operate a railroad from Wilkes-Barre over the divide to a connection with the slack water navigation of the Lehigh near White Haven.

In 1863 the Pennsylvania Legislature (Act of March 4th, 1863, P. L., 99), after reciting the destruction of a part of the company's navigation system by disastrous floods, authorized the company to construct along or near "the site heretofore occupied by the said navigation" a railway extending from the terminus of its existing railway near White Haven to Mauch Chunk, and in 1864 (Act of March 16th, 1864, P. L., 11), authorized the company to extend the railroad from Mauch Chunk down the valley of the Lehigh to and across the river Delaware and to connect in that vicinity with any railroads then or thereafter constructed in the State of New Jersey.

In 1868 the company completed its railroad to and across the Delaware River and for a time operated the railroad for itself, the railroad being colloquially known as the Lehigh and Susquehanna Railroad.

In 1871 the company leased its railroad to the Central Railroad Company of New Jersey, which will be discussed below.

Delaware and Hudson Company.

In 1823 the Pennsylvania Legislature by an Act of March 13th (Laws of Penn, 1823, Chapter 61), granted to Maurice Wurts, who owned a large body of "stone coal lands," broad rights to improve the navigation of the river Lackawaxen, and the New York Legislature by an Act of April 23d (New York Session Laws of 1823, Chapter 238), reciting the desirability for opening a channel through

which the city of New York, and other parts of this State, may receive a supply of stone coal which is found in the interior of the State of Pennsylvania," and reciting Maurice Wurts' ownership of "a large body of this valuable article situated near the headwaters of the River Lackawaxen, which empties into the River Delaware opposite the County of Sullivan," and the Pennsylvania grant of authority to him to improve the navigation of that river, granted a charter to the Delaware and Hudson Canal Company.

By this charter the company was authorized in the eighth article to construct a canal from the Delaware River through any one or more of the counties of Orange, Sullivan and Ulster to the Hudson River, and the company was authorized in the twenty-first article to acquire Maurice Wurts' rights of navigating the River Lackawaxen and to acquire "any lands containing stone coal that he or any other person may own at or near the headwaters of the said river."

In 1825 the Pennsylvania Legislature by an Act of April 21st (Laws of 1825, Chapter 78), after reciting the above mentioned Act of April 23d, 1823, authorized the company "to purchase and hold any quantity of lands situated at any place within ten miles of the waters of Lackawaxen not exceeding 5000 acres."

In 1826 the Pennsylvania Legislature (Laws of 1826, Chapter 67), in order to provide for the company's transportation of coal from its coal beds to its canal authorized the company to construct and maintain railways for that purpose.

In 1827, the New York Legislature by an Act of March 10th (Session Laws of New York, 1827, Chapter 62), lent the credit of the State to the company to further the ends of the charter already granted.

In 1867, the New York Legislature, by an Act of May 9th (Session Laws of New York, 1867, Chapter 841), provided that in addition to the powers already conferred upon the company "for the purpose of opening and of mining and of bringing to market a supply of stone coal which is found in the interior of the State of Pennsylvania, it shall be law-

ful for the said canal company, for the purpose of increasing said supply of coal to construct, own and maintain railroads within the State" and to lease railroads there existing or thereafter created and acquire the stock or bonds of such railroad companies.

In 1859 the Pennsylvania Legislature, by an Act of March 12th (Laws of 1859, No. 123), authorized the company to extend its railroads and also "to purchase and hold an additional quantity of 3000 acres of land in the Townships of Fell, Carbondale, Blakely and Providence in the County of Luzerne, for the purpose of carrying on their operations."

In 1861 the Pennsylvania Legislature, by an Act of April 11th (Laws of 1861, No. 275), authorized the company "for the purposes of their coal business" to construct certain branch or lateral roads or tracks.

In 1863, a Pennsylvania Senate Committee, appointed for that purpose, investigated the condition of the company to determine whether it had exceeded its corporate rights or violated its charter privileges. The Committee reported on April 13th, 1863, and after summarizing the Pennsylvania authorities above quoted, stated that "their general business, and that which their charter and its supplements warrants, is known to be mining coal and transportation," and that the company had not exceeded its powers as a corporation.

In 1866 the Pennsylvania Legislature, by an Act of September 20th (Laws of 1867, No. 1414), authorized the company "to purchase and hold 5000 additional acres of land in the County of Luzerne, and in 1868 this authority was confirmed and re-enacted (Laws of 1868, No. 855).

In 1870 and 1871 (Laws of 1870, No. 533, Laws of 1871, No. 701), the Pennsylvania Legislature authorized the company to construct additional railroads.

In 1899 the New York Legislature, by an Act of April 28th (Laws of New York, 1899, Chapter 469), authorized the company to abandon and sell its canal and change its name to "The Delaware and Hudson Company."

THE LEHIGH VALLEY RAILROAD COMPANY.

In 1830, the Pennsylvania Legislature by an Act of April 7th, 1830 (Laws of 1830, page 392), granted a charter to the Beaver Meadow Railroad and Coal Company, authorizing it to construct a single or double railroad from the Beaver Meadow coal mines in Northampton County to a convenient point on the Lehigh River at any place above Mauch Chunk and providing that "the real estate which it shall be lawful for the said company to hold in their own right in trust or otherwise shall not exceed at any time two hundred acres of coal land, besides what shall be necessary for the railroad hereinafter mentioned and coal roads and landing places as may be proper for the use of the said company," and that "nothing herein contained shall be so construed as to giving or granting said Company any manufacturing or trading privileges or any other privileges beyond what may be necessary to the perfect completion of the said railroad and carrying on a business of mining, transporting and vending coal and receiving the tolls authorized by this act." By a supplementary act of January 29th, 1833 (Laws of 1833, page 18) the Beaver Meadow Railroad Company was granted the right "to hold in their own right 800 acres of land in addition to what they are now authorized to hold, provided the said land shall be contiguous to that now held by the said company or to a route which may be fixed upon their railroad," and by a further supplementary act of March 20th, 1849 (Laws of 1849, page 185), that company was authorized to hold additional lands not exceeding 2000 acres and not to be located at a greater distance than seven miles from the land then held. This company was merged and consolidated into the Lehigh Valley Railroad on July 8th, 1864.

In 1836, the Pennsylvania Legislature (Laws of 1835-1836, page 129), incorporated the Hazleton Coal Company for "the purpose of mining of coal and for transacting the other business of companies engaged in the mining, transporting to market and selling of coal and the

other products of coal mines," and authorized that company to hold 200 acres of land and also such lot or lots not exceeding three acres in any one place as might be found convenient for places of deposit for mining products. In 1839 the Pennsylvania Legislature, by an Act of March 8th, 1839 (Laws of 1839, page 49) authorized that company "to exercise all the privileges and powers granted by Act of March 20th, 1838, to the Laurel Hill Coal Company for the construction of a railroad from the Hazleton Railroad to the river Lehigh," and in 1856, by an Act of January 12th, 1856 (Laws of 1856, page 2) authorized it to hold 1000 additional acres of land not to be located more than ten miles from the lands then held. In 1865, by an Act of March 9th, 1865, (Laws of 1865, page 299) the Pennsylvania Legislature changed the corporate name of the Hazleton Coal Company to Hazleton Railroad Company, and on May 25th, 1868, the latter company was merged and consolidated into the Lehigh Valley Railroad Company.

In 1846 the Pennsylvania Legislature, by an Act of April 21st, 1846 (Appendix to Laws of 1848, page 575), authorized the incorporation of the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company, and in 1853 (Laws of Pennsylvania, 1853, page 1), the corporate name of that company was changed to Lehigh Valley Railroad Company.

In 1869 the Pennsylvania Legislature by an Act of April 15th, 1869 (Laws of 1869, page 31) authorized "railroad and canal companies to aid corporations authorized by law to develop the coal, iron, lumber and other material interests of this Commonwealth, by the purchase of their capital stock and bonds or either of them, or by guarantee of or agreement to purchase the principal and interest or either of such bonds." From time to time after the enactment of this statute and prior to 1874 the Lehigh Valley Railroad Company became a stockholder in several coal companies organized under the laws of Pennsylvania.

Delaware, Lackawanna and Western Railroad Company.

In pioneer days the Drinker family of Philadelphia had acquired 25,000 acres of coal lands in Lackawanna, Pike, Wayne and Susquehanna Counties and had built a sixty mile turnpike to develop these lands.

In 1832 the Pennsylvania Legislature (Act of April 7th, 1832, Laws of 1832, No. 134), incorporated the Ligett's Gap Railroad Company and authorized it to construct a railroad at a point in Cobb's Gap near Scranton, Pennsylvania, "to a point on the New York State line in Susquehanna County passing through the coal region on the Lackawanna and Ligett's Gap." This railroad was a gradual evolution of the Drinker turnpike project.

In 1849, the Pennsylvania Legislature (Act of April 9th, 1849, Laws of 1849, page 648), authorized the Ligett's Gap Railroad Company "to purchase and hold a reasonable amount of coal lands," not to exceed 1000 acres.

In the same year also the Pennsylvania Legislature by an Act of April 7th, 1849 (Appendix to Laws of 1851, No. 470), granted a charter to the Delaware and Cobb's Gap Railroad Company authorizing it to construct a railroad beginning at the Delaware River near Water Gap, thence by a "practicable route terminating at or near Cobb's Gap in the Counties of Luzerne or Wayne."

In 1851, the Pennsylvania Legislature by an Act of April 14th, 1851, (Laws of 1851, No. 338) changed the corporate name of the Ligett's Gap Railroad Company to The Lackawanna and Western Railroad Company and in 1853 (Act of March 11th, 1853, Laws of 1853, No. 123) authorized the consolidation of the Lackawanna and Western Railroad Company and the Delaware and Cobb's Gap Railroad Company under the corporate name of The Delaware, Lackawanna and Western Railroad Company. The latter company thus had rights, dating from 1832, to own both railroads and coal properties.

In 1843 the New York Legislature by an Act of April 18th, 1843 (Session Laws of New York, 1843, Chapter

221) granted a charter to the Cayuga and Susquehanna Railroad Company, and in 1851 by an Act of April 8th, 1851 (Session Laws of New York, 1851, Chapter 103) authorized that company "to make contracts with any corporations or individuals whereby a sufficient supply of coal may be secured for the use and benefit of said company or to be distributed by them" and "to employ so much of its capital for the purpose of mining, transporting and vending coal and in the purchase of such real estate not exceeding 5000 acres of coal land and personal property as they may deem necessary for the purpose aforesaid." On April 21st, 1855, the Cayuga and Susquehanna Railroad Company leased its railroad to the Delaware, Lackawanna and Western Railroad Company.

In 1855, the Pennsylvania Legislature by an Act of March 22d, 1855 (Laws of 1855, page 110) authorized The Delaware, Lackawanna and Western Railroad Company to "increase the quantity of their coal lands to an amount not exceeding (with those already acquired) 2000 acres and to hold said coal lands and to mine, purchase, transport and vend coal," and in 1856 the Pennsylvania Legislature by an Act of March 8th, 1856 (Laws 1856, page 107) authorized The Delaware, Lackawanna and Western Railroad Company to borrow money and to purchase anthracite coal mined from other lands than those owned by it and also to purchase and hold, near Elizabethport, N. J., "such quantity of land as may be necessary for depot, wharfage, and coal yard accommodations for its business, not exceeding fifty acres."

In 1856 the Pennsylvania Legislature by an Act of April 19th, 1856 (Laws of 1857, page 784), granted a charter to the Northwestern Coal and Iron Company authorizing it to "take and hold lands and real estate on lease and in fee simple, and to mine, prepare for market, sell and dispose of cannel and bituminous coal, iron ores, fire clay and other minerals on their lands, and to manufacture iron * * * or other products of their minerals or lands, and to convey the said minerals or the products thereof to market," and "to construct such lateral or branch railroads, not exceeding

twenty miles in length." The Pennsylvania Legislature made successive changes in the corporate name of the Northwestern Coal and Iron Company, the last change being to the name of Keyser Valley Railroad Company by an Act of March 13th, 1865 (Laws of 1865, No. 332). In 1865 the Keyser Valley Railroad Company was merged and consolidated into The Delaware, Lackawanna and Western Railroad Company.

From 1864 to 1867 the Pennsylvania Legislature incorporated The Nanticoke Coal and Iron Company (Laws of 1864, No. 345), the Steuben Coal Company (Laws of 1865, No. 1111), and the Granby Coal Company Laws of 1867, No. 1176). Each of these companies was empowered to hold coal lands, mine and vend coal and transport the same to market. In 1868 the two last mentioned companies were merged and consolidated into the Nanticoke Coal and Iron Company, and in 1870 the latter was merged and consolidated into the Delaware, Lackawanna and Western Railroad Company.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

In 1847 the New Jersey Legislature by an Act of February 26th, 1847 (Laws of 1847, page 128), incorporated the Somerville and Easton Railroad Company, and in 1849 by an Act of February 22d, 1849 (Laws of 1849, page 90), changed the corporate name of that company to the Central Railroad Company of New Jersey.

In 1871, for the purpose of securing to its line the transportation of the anthracite coal produced by the Lehigh Coal and Navigation Company, and two other coal mining companies subsequently merged and given the name of the Lehigh and Wilkes-Barre Coal Company, the Central Railroad Company of New Jersey leased the Lehigh and Susquehanna Railroad, the line above mentioned as owned by the Lehigh Coal and Navigation Company.

In 1874 the New Jersey Legislature (Act of March 21st, 1874, Laws of New Jersey 1874, page 1176), after reciting that "The Central Railroad Company of New Jersey are the lessees, in perpetuity, of the railroad, branches and works

of the Lehigh Coal and Navigation Company in the State of Pennsylvania" and that "in order to secure a paying business for their said railroad and works, it may be advisable and necessary that the said The Central Railroad of New Jersey should guarantee the payment of such bonds as may be issued, from time to time, by companies owning or working coal land adjacent to any of the said roads or works" authorized the Central Railroad Company of New Jersey "a majority in interest of their stockholders consenting thereto, to guarantee the payment of the bonds of any coal company or companies owning or working coal lands along the line of, or adjacent to, any of the railroads, branches or works in the State of Pennsylvania, so held by lease by the said Company, and in which lands the said Company may or may not have an interest."

By various earlier acts now amended into the form of Section 51 of the General Corporation Law of New Jersey the Central Railroad Company is possessed of the power to hold the shares of the capital stock, bonds, securities or evidences of indebtedness created by any corporation of the State of Pennsylvania, and while the owner of such stock may exercise all rights, powers and privileges of ownership, including the right to vote thereon.

THE PHILADELPHIA AND READING RAILWAY COMPANY.

In 1833 the Pennsylvania Legislature by an Act of April 4th, 1833 (Laws 1833, No. 76), granted a charter to the Philadelphia and Reading Railroad Company, authorizing it to build a railroad "beginning at or near the borough of Reading, in Berks County, and terminating at some suitable point in or near the city of Philadelphia."

During the forty years ensuing after its incorporation this Company, as a result of stock purchase, lease and other methods of acquisition, gained control over innumerable small roads, chiefly in the anthracite regions, and forming the nucleus of the present Reading System.

In 1871, the Pennsylvania Legislature by an Act of May 18th, 1871 (Laws of 1871, No. 817), granted a charter

to the Laurel Run Improvement Company authorizing it to acquire coal lands and mine and vend coal. By the fifth section of this charter it was provided that "it shall be lawful for any railroad or mining company existing under the laws of this State to subscribe for or purchase the stock or to purchase or guarantee the bonds of the company hereby incorporated." Nearly all of the stock of this company was acquired by the Philadelphia and Reading Railroad Company and on December 12th, 1871, the name of the Laurel Run Improvement Company was changed to the Philadelphia and Reading Coal and Iron Company.

In 1869 Mr. Charles E. Smith resigned as President of the Railroad Company and Mr. Franklin B. Gowen was chosen in his place and under his administration the policy of the company underwent a change. It was in the annual report of the company for the year ending November 30th, 1871, that the changed policy was announced by the management and the Coal and Iron Company first appeared in the accounts. The part of that report giving the reasons that influenced the management in the acquisition of stock in the coal mining company is as follows:—

"The repeated and serious interruptions of the business of the Company, caused by strikers in the coal regions during the last few years, and the many fluctuations in the coal trade, produced by alternate periods of expansion and depression resulting therefrom, have directed the attention of the Managers of the Company to the necessity of exercising some control over the production of coal, so as to prevent a recurrence of the difficulties heretofore experienced; and it was believed that the best way of accomplishing this result, without injuriously affecting individual interests, was for the Company to become the owners of coal lands situate upon the line of its several branches.

"Up to this time about 70,000 acres of the best anthracite coal lands in Pennsylvania have been acquired, and will be held by an auxiliary company, known as the Philadelphia and Reading Coal and Iron Company, of which the Phila-

delphia and Reading Railroad Company is the only stockholder.

"The result of this action has been to secure and attach to the Company's railroad a body of coal land capable of supplying all the coal tonnage that can possibly be transported over the road for centuries. This result has been obtained without imposing any serious financial burden upon the Company, for the lands purchased are already so far developed that it is estimated they will produce in rents, during the year 1872, $1,200,000; and it is believed that in less than three years the net annual revenue arising from the lands will be greater than the interest payable upon the loan issued to secure them."

Report of January 8th, 1872, pages 16 and 17, as introduced by the Government—See Stenographer's minutes, pages 232 to 234 inclusive.

In the reference to the anticipated rentals above is reflected the original policy of the Coal Company, which was to be merely a landlord owning coal lands and leasing them to individual operators on royalty. This policy proved unsuccessful, however, and the Coal Company was forced to abandon it after a trial of three years and embark in the business of mining and marketing coal.

The conditions which compelled this change of policy are described at pages 26 and 27 of the annual report issued January 11th, 1875.

"An experience of one or two years as landlords showed how utterly inadequate, under existing circumstances, the individual tenants were to develop and improve the estate;" first, because they had not sufficient capital to mine properly; and, second, because the depression resulting from the strikes had given little encouragement to individuals to engage in mining. Therefore, your managers resolved (page 27) to become miners of the coal themselves; and for this purpose, in addition to "expenditures for purchasing, opening and improving collieries," they go on to say, "a large

investment was made, outside of the coal regions, to enable them to handle and successfully dispose of the product of the mines. Large retail yards in the city of Philadelphia, wharves and shipping facilities in New York and the various eastern ports have been purchased and erected; and it is believed that no other company now possesses greater advantages than those of the Philadelphia and Reading Coal and Iron Company, in the ability to mine coal economically, and to dispose of a large product to the best advantage; the only improvement yet wanted to complete the system, being a depot capable of storing at one place at least five hundred thousand tons of coal, in order to keep the collieries constantly at work, and avoid the expense of stopping them whenever orders are scarce, or vessels not in sufficient supply to carry away the products."

Introduced by Government—Stenographer's minutes, pages 240 and 241.

In 1893 both the Philadelphia and Reading Railroad and the Philadelphia and Reading Coal and Iron Company went into the hands of Receivers of the Federal Courts. In 1896 purchasers at the Receiver's sale bought, among the other assets of the railroad company, the stock of the coal company, and later transferred it to what is now the Reading Company. At the same time the same purchasers bought the remaining assets of the railroad and transferred most of them to the Philadelphia and Reading Railway Company, whose stock was also owned by what is now the Reading Company.

Erie Railroad Company.

In 1832 the New York Legislature by an Act of April 24th, (Laws of 1832, Chapter 224) incorporated the New York and Erie Railroad Company. In 1861, under special acts of the New York Legislature (Session Laws of New York, 1860, Chapter 160 Laws 1861, Chapter 191),

this company was organized as the Erie Railway Company.

In 1878 the Erie Railway Company was reorganized under the laws of New York as the New York, Lake Erie and Western Railroad Company, and in 1895 the latter company was reorganized as the Erie Railroad Company.

In 1838 the Pennsylvania Legislature (Laws 1838, No. 73) granted a charter to the Pennsylvania Coal Company giving it the right of "transacting the usual business of companies engaged in mining, transporting to market and selling coal and other products of coal mines," and the power to purchase and lease coal lands and to "construct railroads with one or more tracks." Its powers in these respects were enlarged by subsequent Acts (Laws 1839, No. 155; Laws 1841, No. 157; Laws 1849, No. 115, and No. 354; Laws 1850, No. 250; Laws 1853, No. 140; Laws 1857, No. 85; Laws 1864, No 365; Laws 1867, No. 634; Laws 1868, No. 1018). In 1853, in particular, the Pennsylvania Legislature (Laws 1853, No. 140) authorized the Pennsylvania Coal Company to "extend its two tracks of railroad * * * to connect with the New York and Erie Railroad, or to such points in the State of New Jersey or New York as the respective Legislatures of said States may authorize," and "to connect or consolidate with, or lease some railroad or canal in the said States of New Jersey or New York, and acquire, hold, exercise the rights, privileges and franchises of such corporation in such manner and on such terms as may be mutually agreed upon." In 1862 the New York Legislature (Session Laws of New York, 1862, Chapter 66) provided that "if any corporation organized or to be organized in the States of New Jersey or Pennsylvania, shall undertake to construct a coal road to connect the same with the road of the Erie Railway Company, between Oxford Station in Orange County and Deposit in the County of Delaware, for the transportation of coal, said Erie Railway Company is hereby authorized to lease said coal road, and to contract for the leasing and operation of the same, and for

the transportation of coal over said coal road, and upon any road that may be owned or operated by said Erie Railway Company." Pursuant to the authority thus conferred by the Pennsylvania and New York Legislatures, the Pennsylvania Coal Company constructed a coal road, later known as the Erie and Wyoming Valley Railroad, from a connection at Hawley, Pennsylvania, with a gravity railroad already constructed, to a connection with the Erie Railway Company's railroad between Oxford Station and Deposit, and on January 1st, 1864, leased this coal road to the Erie Railway Company. This coal road now forms the Hawley Branch of the Erie.

In 1851 the Pennsylvania Legislature by an Act of April 28th, 1851 (Laws 1851, No. 378) granted a charter to the Jefferson Railroad Company. Under this charter and the supplement thereto (Act of March 18th, 1863, Laws 1863, page 160) a railroad was constructed from Carbondale, Pa., to a connection with the railroad of the Erie Railway Company at Lanesboro, Pa., primarily for the purpose of furnishing an outlet for anthracite coal from the northerly end of Lackawanna Valley where the Hillside Coal and Iron Company conducts its operations. In 1869 the Jefferson Company was leased to the Erie Railway Company.

In 1867 the Pennsylvania Legislature by an Act of April 12th, 1867 (Appendix, to Laws, of 1869, page 1312) incorporated the Hillside Coal and Iron Company authorizing that company to "purchase and hold in fee simple, by lease or otherwise, coal, iron, mineral and lumber lands in this Commonwealth, not exceeding at any one time 5000 acres, with power to connect said lands by railroad not exceeding twenty miles in length with other railroads, canals or public improvements also with power to use its capital in purchasing, mining, vending and transporting to market coal, iron, lumber and other products of their lands. Nearly all of the capital stock of this company was acquired by the Erie Railway Company and subsequently became the property of the Erie Railroad Company in 1895.

The Pennsylvania Railroad Company.

In 1846 the Pennsylvania Legislature by an Act of April 13th, 1846 (Laws 1846, No. 262), incorporated the Pennsylvania Railroad Company.

In 1869 the Pennsylvania Legislature by an Act of April 15th, 1869 (Laws 1869, page 31), authorized "railroads and canal companies to aid corporations authorized by law to develop the coal, iron, lumber and other material interests of this Commonwealth, by the purchase of their capital stock and bonds or either of them."

In 1871, pursuant to this authority, the Pennsylvania Railroad Company commenced to make acquisitions of shares of the capital stock of the Susquehanna Coal Company, the Summit Branch Mining Company and of the Mineral Railroad and Mining Company, all of which are coal mining corporations of the State of Pennsylvania, and finally by purchases from time to time after that date, it became the owner of all the shares of the two first named companies and the owner of one-third of the shares of the last named company. The most largely producing of the properties belonging to these coal companies are located either directly upon, or so contiguous to, the system of railroads operated by the Pennsylvania Railroad Company as to make these railroads the only reasonably practical avenues of transportation of the coal mined by the coal companies in question.

A recapitulation of the foregoing will disclose that some one or more of the States named in the caption recognized the propriety of this dual mining and transportation interest in the control of the same individuals or corporation over and over again between 1818 and 1874. It will be noted in detail that such recognition was afforded in legislation in 1818, 1822, 1823, 1825, 1826, 1827, 1830, 1832, 1833, 1836, 1837, 1838, 1839, 1841, 1843, 1846, 1849, 1850, 1851, 1853, 1855, 1856, 1857, 1859, 1861, 1862, 1863, 1864, 1866, 1867, 1868, 1869, 1870, 1871 and 1874.

Mr. Reynolds also offered in evidence excerpts from the United States Geological Report and the publications in the United States Geological Department, as follows:—

Excerpts from the Annual Reports of Department of the Interior—U. S. Geological Survey. Mineral Resources of the U.S. 1901, 1904, 1905, 1906, 1907, and 1908. Excerpts from "The Production of Coal." By Edward W. Parker. Advance Chapter from Mineral Resources of the United States 1910 and 1911. Excerpts from "The Production of Anthracite in 1912." By Edward W. Parker. Advance Chapter from Mineral Resources of the United States.

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ANNUAL REPORT FOR THE CALENDAR YEAR 1901.

The year 1901 was noteworthy in the anthracite trade for two reasons: First, the largest production in the history of the trade; second, the largest average net return realized during the last ten years. These results were brought about by the remarkable demand for this fuel, which was at nearly all times during the year in excess of the supply.

The total production amounted to 60,242,560 tons, an increase over the year 1900 of 9,021,207 tons, and made up as follows:—

	Long tons.
Sent to market	53,694,530
Sold to local trade and used by employees at mines	1,185,480
Used for steam and heat at mines	5,362,550
Total	60,242,560

PRODUCTION OF ANTHRACITE COAL FROM 1897 TO 1901, INCLUSIVE.

Year.	Production.	Value.	Average per ton.	Number of employees.	Days worked.
	Long tons.				
1897	46,974,715	$79,301,954	$1.85	149,557	150
1898	47,663,076	75,414,537	1.75	145,184	152
1899	53,944,647	88,142,130	1.80	139,608	173
1900	51,221,353	85,757,851	1.85	144,206	166
1901	60,242,560	112,504,020	2.05	145,309	196

In the report for 1900 comment was made on the proportion of the various sizes of coal shipped to market and attention was called to the fact that the prepared sizes, broken, egg, stove and chestnut, made up, in 1875, about 75 per cent. of the total product shipped, pea about 6½ per cent., and sizes below pea little or nothing. In 1900 the prepared sizes made up only 60 per cent. of the total shipments, while pea coal had increased to 14 per cent. and sizes smaller than pea to 21 per cent. The larger part of this increase in small sizes was made up of coal washed from the culm banks by plants known as washeries. In 1901 the proportion of sizes shipped varied only slightly from the previous year; prepared sizes being about 60 per cent. of the total shipments, pea about 14 per cent., and sizes smaller than pea about 21½ per cent., the remainder being lump coal. Page 422.

ANNUAL REPORT FOR THE CALENDAR YEAR 1904.

The prosperous condition which was so marked in the anthracite industry in the year 1903 continued during 1904, although the total production for the latter year was not so great. The falling off in the product, however, was more apparent than real, as during the early part of 1903, in the months immediately following the strike of the previous year, every ton of available coal was rushed to market to supply the great demand at that time. As was noted in the report for the year 1903, the stocks of anthracite coal in all parts of the country were completely exhausted during the strike, and the demand from November, 1902, to the middle of 1903 was much greater than the capacity of the collieries to supply it. In addition to this, dealers at all points naturally attempted to provide adequate stocks for the winter of 1903-4, but the severity of the weather during this winter was such as to completely exhaust all supplies of the domestic sizes. Page 533. Page 534.

The year 1904, therefore, started with a good demand for domestic sizes, although there was considerable stock of small coal held in storage. The cold weather continuing

well on in the spring made the late winter and early spring demand for coal exceptionally good, and throughout the entire year the collieries were practically worked to their full capacity.

The heavy demand during the year resulted in good prices being realized on all domestic sizes. This, however, was not true to the same extent of the small coals on account of the keen competition of bituminous coal. However, the average price per ton realized on the entire product of anthracite was fairly satisfactory, although 15 cents below that for the year 1903.

Page 535. The following figures give a comparison of the production, value, men employed, and days worked during the last four years:—

STATISTICS OF ANTHRACITE PRODUCTION, 1901–1904.

Year.	Quantity.	Value.	Average price per ton.	Average number of men employed.	Average number of days worked.
	Long tons.				
1901	60,242,560	$112,504,020	$2.05	145,309	196
1902	36,940,710	76,173,586	2.35	148,141	116
1903	66,613,454	152,036,448	2.50	150,483	206
1904	65,318,490	138,974,020	2.35	155,861	200

ANNUAL REPORT FOR THE CALENDAR YEAR 1905.

SHIPMENTS OF PENNSYLVANIA ANTHRACITE IN 1905.

Page 511.

	Long tons.
Philadelphia & Reading*	20,557,776
Lehigh Valley	11,677,498
Lackawanna	9,554,046
Erie	6,225,622
Delaware & Hudson	5,640,528
Pennsylvania	4,890,635
New York, Ontario & Western	2,864,095
	61,410,200

* Including Central Railroad of New Jersey and Lehigh Coal & Navigation.

Page 655. The whole subject of marketing anthracite coal is an interesting one. On account of the greater expense of mining anthracite as compared with bituminous coal, it is impossible to carry it great distances to compete with bitu-

minous coals in markets where the people are accustomed to bituminous coal and can get it at much less cost. The result of this has been practically to confine the consumption of anthracite to the States along the Atlantic seaboard. It is found that nearly 82 per cent. of the total shipments of anthracite is consumed in the New England States, New York, Pennsylvania, and New Jersey; in addition, 3.4 per cent. goes to the Southern States, practically all of this southern trade being distributed along the Delaware and Maryland Peninsula, to Baltimore and Washington, and to points within easy reach of the coast; and 3.56 per cent. goes to Canada, by tidewater from Philadelphia or New York, by crossing the lakes, or by all-rail routes connecting with the initial anthracite lines. It will thus be seen that only about 11 per cent. of the entire anthracite shipments reaches territory west of Buffalo, Erie, Pittsburgh, or corresponding points.

The distribution to the geographical sections is as follows:—

DISTRIBUTION OF ANTHRACITE COAL IN 1904 AND 1905.

	1904.		1905.	
	Long tons.	Percentage.	Long tons.	Percentage.
Pennsylvania, New York, and New Jersey	38,376,080	66.75	41,501,569	67.58
New England States	8,242,087	14.34	8,692,504	14.15
Southern States	2,061,810	3.58	2,080,088	3.39
Western States	6,579,644	11.44	6,904,314	11.25
Pacific coast	4,500	.01	1,743	0.0
Dominion of Canada	2,193,746	3.82	2,187,450	3.56
Foreign ports	34,646	.06	42,533	.07
Total	57,492,522	100.00	61,410,201	100.00

In spite of the anthracite-consuming territory being so circumscribed geographically, this territory is rich and populous, and it would seem, from a study of the great growth of the bituminous production, that anthracite had scarcely had its proportionate growth. It should be borne in mind, however, that there are certain competitive conditions surrounding this industry which curtail the

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increased consumption naturally to be expected with the growing population.

Even the casual observer does not need to be told of the great increase in the use of gas and oil for fuel. The convenience and cleanliness of gas, and the comfort with which it can be used in summer, has resulted in the installation of hundreds of thousands of gas ranges and heaters in the anthracite-consuming territory. A great impetus in this direction was given during the strike of 1902, and what was then done as the result of necessity has continued and grown on account of its convenience.

In addition to these obvious factors affecting the consumption of anthracite coal, there are many other influences which tend to curtail the demand for this product. For instance, in many settlements, especially recent ones, central heating plants have been established. These produce and supply heat at reasonable rates to all houses equipped for such service, thus greatly diminishing the demand for anthracite in these localities, if not (as is the case where bituminous coal is used in these plants) cutting it off altogether. In these cities, too, the growing tendency of people to live in apartment houses is producing the same effect.

These and other more obscure causes tend to limit what would be considered the natural increase in the demand for this product.

It must not be supposed, however, that the anthracite trade has not shown a substantial growth during the last fifteen years, even though it seems small compared with the great increase in the production of bituminous coal. In 1897, when the opinion in the trade respecting the future of this industry was rather gloomy, the writer, in his report to the Survey, expressed himself as follows:—

Note is made in the beginning of this report of the falling off in tonnage for the year 1897 as compared with 1896, and the significance of the reduced production is accentuated when comparison is made with the bituminous coal production in 1897. With very few exceptions, the coal-producing States show an increase over 1896, which

in some cases is large. In Pennsylvania this increase amounted to 4,500,391 long tons, while the increase of bituminous coal production in the United States for the year 1897 over 1896 was 8,908,252 long tons, compared with a decrease of 1,709,213 tons in the production of anthracite.

What conclusion is to be drawn from these facts and figures? It has been persistently contended by those who think they see the ultimate doom of the anthracite industry that this decrease in production indicates the encroachment of two competitive forces which will ultimately result in the undoing of anthracite. The first of these is the competition of bituminous coal with the small sizes of anthracite for steam purposes. That such competition exists and that the bituminous coal often has the better of it can not be doubted, but that bituminous coal will completely displace the small sizes of anthracite in the steam coal market seems improbable, since the latter is used in thousands of places where the former coal would be altogether undesirable. The second of these factors is the growing use of gas as a substitute for coal in domestic uses. Unquestionably the use of gas for cooking and heating purposes in private houses is increasing, but that the domestic market for anthracite coal will be destroyed by it is altogether a different proposition. Those who contend that these factors will permanently narrow the market for anthracite seem to forget that the market for fuel is continually expanding and demanding more and more varied means of supply. It has been the almost universal experience that in a broad field the introduction of new methods and new materials has resulted not in doing away with the old, but in modifying and sometimes actually increasing their use and at the same time providing for the new by opening up new avenues of demand. When gas was introduced the prediction was made that it would altogether supersede oil, but the oil industry continued to grow. When electric light was first introduced it was to do away with gas, but gas companies were never so prosperous as they are to-day.

So it is with anthracite coal. It has a place in the economy of the world to-day, and while of course its market will not grow to the same extent as if it had no competition, one would not be judging the present by past experience if he predicted any great contraction of the anthracite market, but should rather expect a reasonable expansion as the business of the country regains its normal condition. In fact, it would not be fair to judge of the future market of any commodity by the experience of the last few years, which have been years of universal business depression, but it would be more logical to infer that with the natural expansion and growth of trade under healthful conditions the anthracite trade will come in for a share, at least, of the improvement and increase.

Page 657. It is interesting to note to what extent this opinion has been borne out by examining the present conditions in the trade in the section of territory already outlined—the New England States, New York, Pennsylvania, and New Jersey.

In 1891 the total shipments of anthracite amounted to 40,448,336 long tons, and of this quantity about 77 per cent. went to the territory mentioned, or a tonnage of over 31,000,000. The population of these States in 1891 was approximately 17,600,000, which would indicate a per capita consumption of anthracite of about 1.71 tons. In 1905 the population of these States was about 23,000,000, and the shipments of anthracite to this district amounted to over 50,000,000 long tons, or a per capita consumption of 2.18 tons, an increase of nearly half a ton for each inhabitant.

This increase, it is true, is largely accounted for by the great increase in the quantity of small sizes of coal shipped in 1905 as compared with 1891. In the earlier year the amount of pea and smaller sizes shipped was, 9,965,010 long tons, and as this was practically all consumed in the territority above mentioned, it should be deducted from the total quantity going to these in order to get the tonnage of domestic sizes consumed, which would be approximately 21,500,000 long tons, or a per capita con-

sumption of domestic sizes of 1.22. In 1905 the quantity of pea and smaller sizes shipped was 23,984,984 long tons, which, deducted from the total of all sizes, would leave 26,209,089 tons of domestic sizes consumed in these States, or a per capita consumption of 1.14 tons.

It may be objected that the above figures do not represent actual consumption, but only shipments to the territory named, and that there was relatively a larger stock of coal on hand at the close of 1905 than at the close of 1891; therefore to test the above result average years have been taken for comparison—that is, an average of three years ending with 1891 has been compared with an average of three years ending with 1905. The comparison of these average years may be considered a fair one, as the average stock on hand in the 1889-1890-1891 period was probably as large relatively as that for the 1903-1904-1905 period.

The results do not differ materially from the comparison of 1891 and 1905.

They can be stated as follows:—

	Average of years 1889–1890–1891.	Average of years 1903–1904–1905.
	Long tons.	Long tons.
Per capita consumption, all sizes	1.67	2.11
Per capita consumption, large sizes	1.17	1.11
Per capita consumption, small sizes	.50	1.00

It will thus be seen that the relative use of anthracite in the principal consuming States is greater than it was fifteen years ago if all sizes of anthracite be considered, and not much less if only prepared sizes are included, in spite of the greatly-increased use of substitutes for this fuel.

This review would not apply to that part of the product going to the extreme North into Canada or to the extreme South and West as the farther it is moved from the source of supply the more its use becomes a matter of luxury

and not necessity, and the more it yields in competition with cheaper fuels produced locally.

As noted in the discussion of the condition of the anthracite trade, the production for the year 1905 was the largest on record, amounting to 69,339,152 long tons. Of this, 61,654,432 tons were shipped to market, 1,402,644 tons were sold about the mines locally, and 6,282,076 tons were used for steam and heat. In connection with this total product and the quantity shipped it should be noted that 2,777,337 long tons were reclaimed from the culm banks.

ANNUAL REPORT FOR THE CALENDAR YEAR 1906.

Page 1711. Compared with the exceptionally large tonnage of 1905, the production and consumption of anthracite in the year 1906 showed a material decrease. This falling off in the tonnage is, however, easily accounted for. As noted in the report for 1905, the weather conditions during the winter of 1904-5 were such as to drain heavily on the accumulated stocks of anthracite, and the demand during the first three months of 1905 was especially large. The depleted stocks naturally stimulate production, and to this was added the fear of a strike at the termination of the three years' agreement ending April 1, 1906.

The suspension of mining, beginning April 1 and lasting until May 16, resulted for the time being in a loss of about 7,500,000 tons, based upon a monthly production of 5,000,000 tons. Part of this loss had been anticipated by the increased production during the first three months of 1906, in the expectation of a strike, with the result that at the end of May the shipments were only about one month's production less than for the corresponding period of 1905, although the suspension lasted six weeks. During the remainder of the year the shipments about averaged those of 1905, there being a net loss of only 548,444 tons from June 1, 1906, as compared with the corresponding period of 1905.

DEPARTMENT OF THE INTERIOR.

U. S. Geological Survey.

Advance Chapter for Mineral Resources of the U. S., Calendar Year 1907, on the Production of Coal in 1907.

Considered as to tonnage of shipments, the year 1907 Page 170.
was the most remarkable in the history of the anthracite trade, the shipments amounting to 67,109,393 long tons, 5,699,192 tons more than in 1905, which had been the record year; compared with 1906 the increase was 11,410,798 tons.

The principal reason for the large falling off in the shipments for 1906 as compared with 1905 was the suspension of mining from April 1 to May 16, 1906, which resulted in an approximate loss of 7,500,000 tons. This reduction was undoubtedly most effective in stimulating the demand for the remainder of the year 1906, and had the consequent effect of cleaning up stocks and leaving the market in a condition to absorb the great tonnage of 1907. The average of the shipments for the three years from 1905 to 1907, inclusive, is about the same as the tonnage of 1905, and the deficit in the shipments of 1906 is about made up by the increase in 1907—in fact, this average only varies a few thousand tons from the 1905 shipments, as is shown by the following figures:—

Shipments of Pennsylvania Anthracite, 1905-1907, in Long Tons.

1905	61,410,201
1906	55,698,595
1907	67,109,393
Total	184,218,189
Average	61,406,063

It might be said that this average represents the yearly Page 171.
demand under normal business conditions, but such a conclusion could be applied only to a very short period.

There has been a steady though irregular increase in the shipments of anthracite coal. Many estimates and pre-

dictions have been made as to the point when the maximum production would be reached, and the writer has referred to these matters at some length in previous reports, but apart from the yearly variations and the general increase in production, there is abundant evidence that the entire anthracite situation has undergone a complete change within the last ten years in so far as supply and demand are concerned. Ten years ago the producing capacity of the anthracite territory was in excess of the demand; at the present time under normal conditions the market's requirements are quite equal to the supply.

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STATISTICS OF ANTHRACITE PRODUCTION, 1903–1907.

Year.	Quantity (long tons).	Value.	Average price per ton.	Average number of men employed.	Average number of days worked.
1903	66,613,454	$152,036,448	$2.50	150,483	206
1904	65,318,490	138,974,020	2.35	155,861	200
1905	69,339,152	141,879,000	2.25	165,406	218
1906	63,645,010	131,917,694	2.30	162,355	195
1907	76,432,421	163,584,056	2.35	167,234	220

ANNUAL REPORT FOR THE CALENDAR YEAR 1908.

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In the year 1908, in spite of the financial and business depression, the general results in the anthracite trade were in the main eminently satisfactory. The production for the year was the second largest in the history of the trade, and it is the more remarkable in that it approached that of the year 1907, in which the production was the largest in the anthracite industry.

This situation would seem to corroborate the statements made in previous reports that the demand for anthracite coal under normal business conditions was fully equal to the supply, and it is the opinion of those most familiar with the trade that in the future it will be difficult to

supply the demand for anthracite even in the territory in which it is now generally used, not to mention any demand which may arise from newly developed territory.

This is in spite of the increased use of bituminous coal and coke for domestic purposes, the installation of central heating plants using bituminous coal as a fuel, and the great number of gas plants throughout the country, a large part of the product of which is consumed for domestic purposes, either in heating, cooking or in other ways replacing the former use of anthracite.

It is of course impossible to predict anything definitely in regard to the future of the anthracite industry on account of the competition of other fuels and the possibility of more improved methods of using them.

To illustrate the changed conditions in the anthracite trade during the last five years—that is, from 1904 to 1908, inclusive—as compared with the five-year period from 1894 to 1898, inclusive, it is only necessary to mention that during the latter five-year period the average annual shipments to market amounted to 61,275,125 tons, while in the five-year period ending with 1898 the average annual shipments were 42,923,555 tons, indicating an increase in ten years of nearly 50 per cent. and, as was pointed out before, this is in the face of not only the competition of all other fuels, but also the use of generally improved methods of using such fuels.

What the final results of such conditions may be it is impossible to foresee, but it would seem reasonable that with the increased difficulties and cost of mining and the constantly-increasing demand for anthracite that the cost for this commodity would correspondingly increase. Page 160

Advance Chapter from Mineral Resources.

"*The Production of Coal in 1910.*"

The production of anthracite coal in 1910 was nearly three times that of 1880. Page 19.

The rate of increase in the production of anthracite is not materially different from the increase in population.

The principal demand for anthracite will be in the future, as it has been in the more recent past, restricted largely to domestic trade, for which such sizes as furnace, egg, stove, and chestnut are required. The breaking down of the lump coal, which was formerly a marketable product, for the preparation of the domestic sizes, results in a much larger proportion of the small or undesirable sizes, all of which are sold at less than the cost of production. As shown in the subsequent pages of this report, the percentage of these small sizes has increased from 23.1 per cent. in 1890 to 41.6 per cent. in 1910, while the percentage of sizes above pea coal, or what may be termed the profitable sizes, has decreased from 77 to 58.4 per cent. All of the profits on the mining operations must be obtained from the prepared domestic sizes, for the revenue obtained from the smaller sizes, which are sold largely in competition with bituminous coal for steaming purposes, serves only to reduce the cost of the domestic sizes. The conditions under which the anthracite mines are operated, the greater depths to which the workings are carried, the consequent increased expense of mining, and the increasing cost of labor all contribute to make anthracite fuel more and more a luxury. No hope is held out to the consumer that anthracite will in the future be sold at lower prices than those which prevail to-day, but, on the other hand, there is every reason to believe that prices must advance in accordance with the increasing cost of production. It is only by reason of economical administration that prices are not higher than they are.

Page 21.

During recent years the anthracite operators have adopted the policy of making an allowance of 50 cents per ton from circular prices for domestic coal purchased in April of each year, with an advance of 10 cents per ton for each succeeding month until the schedule prices are restored in September. This has had a more salutary effect in steadying the anthracite trade than any other action taken by those controlling the anthracite industry. Its purpose is to encourage the purchase of coal in the spring and early summer, making the cellars of the con-

sumers the storage places for the following winter, and at the same time to cause the mines to be operated more regularly, thus giving steadier employment to employees throughout the year.

With the exception of the "boom" year, 1907, the production of anthracite in Pennsylvania in 1910 was the largest in the history of the industry. The quantity produced in 1910 was 75,433,246 long tons, an increase over 1909 of 3,048,997 long tons, or 4 per cent. The value increased from $149,181,587 in 1909 to $160,275,302, a gain of $11,093,715, or 7.4 per cent. The production in 1910 was within almost exactly 1,000,000 long tons of the maximum record for 1907, when the output amounted to 76,432,421 long tons. The value of the product in 1907 exceeded that of 1910 by $3,308,754. The average price per ton at the mines in 1910 was $2.12, against $2.06 in 1909, $2.13 in 1908 and $2.14 in 1907. Page 181.

In former years the colliery consumption was not considered as having any market value, consisting as it did of screenings, or culm, which, unless so used, was wasted. More recently, through the invention of grates and furnaces adapted to the use of small sizes of anthracite, stimulated by the higher prices of the prepared sizes, the percentage of waste has been reduced to a minimum. "Buckwheat," "rice," "barley," and even culm are now important steam-raising fuels, particularly in hotels, apartment houses, and large office buildings in the larger cities of the East, where smoke-inhibiting ordinances are in force. In fact, these small sizes are now the only grades of anthracite used to any extent for this purpose, and are the only sizes that will compete with bituminous coal for steam raising in the eastern markets. An object lesson in practical conservation is here furnished and, to the credit of the operators in the anthracite region be it said, it was put into effect a number of years before the agitation over the conservation of natural resources began. Page 182.

Of the total production of 75,433,246 long tons in 1910, 4,184,629 tons were recovered from the old culm banks by washeries, and 91,833 tons were recovered by dredges from

the bed of Susquehanna River. The total output from the mines was 71,156,784 long tons. In 1909 the mine production was 67,945,137 long tons.

The policy adopted several years ago by the operators of allowing discounts from the circular prices for coal purchased in the spring and early summer months continues to work satisfactorily. The discounts allowed on domestic sizes are 50 cents a ton in April, 40 cents a ton in May, 30 cents in June, 20 cents in July, and 10 cents in August, the circular prices being restored in September. The inducement thus offered to make the cellars of consumers the storage places for the winter supplies of fuel has had a notably steadying influence on the trade and gives employment to the miners through the entire year, against rush work in winter and much idleness in summer before the rule became effective. The effect of the discounts on shipments in 1910 is shown in the fact that the shipments in April, May, and June each exceeded those in either January, February, or March. April shipments were larger than in any other month except December, which was exceptionally cold. The effect upon the miners is shown in the figures giving the average number of days worked. From 1897 to 1901, inclusive, the average number of days worked in the anthracite mines ranged from 150 to 196, with a mean average of 165 days. From 1906 to 1910 the average number of working days ranged from 195 to 229, with a mean average of 210. This means, in addition to the increase in wages following the strike of 1902, and the further benefits secured to the miners through the sliding scale created at the same time, that the miners, by reason of an increase of 27 per cent. in their working time, are able to further supplement their earnings by that percentage. With these facts in mind one may easily believe the statements frequently made that at no time in the history of the anthracite trade have there existed the prosperity and contentment that have had place in the region during the last eight years.

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Advance Chapter from Mineral Resources of the U. S. for 1911.

"*The Production of Coal in 1911.*"

The increase in the production of anthracite bears an approximate relation to the increase in population. This has been particularly marked during the last two decades, or since the use of anthracite for iron making and in other branches of manufacture has practically disappeared. Page 168. Page 169.

Its use is now confined principally to domestic consumption and to the heating of hotels, apartment houses, and large office buildings.

The production of anthracite in 1911 was something more than double that of the average production from 1886 to 1890.

Production of Anthracite Coal Since 1876, by Averages of Five-Year Periods, in Short Tons.

Period.	Anthracite. Quantity.
1876–1880	25,800,169
1881–1885	36,198,188
1886–1890	43,951,763
1891–1895	53,405,187
1896–1900	55,625,265
1901–1905	66,853,778
1906–1910	81,142,214
1911	90,464,067

The production of anthracite in Pennsylvania in 1911 reached the highest point in the history of the industry, exceeding the previous maximum record of 1907 by 4,300,000 long tons. The quantity of anthracite produced in 1911 was 80,771,488 long tons, valued at $175,189,392. In 1910 the output amounted to 75,433,246 tons, valued at $160,275,302, indicating an increase in 1911 of 5,338,242 long tons, or 7 per cent. in quantity, and of $14,914,090, or 9 per cent. in value. In this increased activity and augmented production in 1911 the anthracite industry was in marked contrast to the bituminous industry, which showed decreases throughout most of the mining regions. Page 170.

Moreover, throughout most of the bituminous districts prices were generally demoralized, whereas the average price for anthracite in 1911 was 5 cents higher than in 1910. This does not mean, however, that there was a general advance of prices for anthracite in 1911. The prices for the domestic sizes above pea coal in 1911 were the same as in 1910; but the proportion of the larger and higher-priced sizes sent to market in 1911 was greater than in 1910 or 1909, and the quantity of cheaper coal recovered by washeries was less in 1911 than in any of the preceding five years.

The increased production of anthracite in 1911 was probably due, in part at least, to an activity in the later part of the year, stimulated by the anticipation of and to make provision for an expected suspension of mining when the third three-year period of wage agreements should terminate, on March 31, 1912. How much of such coal went into storage has not been reported, but it is certain that the unusually, if not unprecedentedly severe winter of 1911-12 necessitated the practical exhaustion of such storage coal before the suspension took place.

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The recovery from the culm banks and the small sizes obtained from the freshly-mined coal constituted over 40 per cent. of the total quantity of anthracite sent to market. In 1911 out of total shipments amounting to 70,424,197 long tons, 41,728,071 long tons, or 59.2 per cent., were of sizes above pea coal, and 28,696,126 long tons, or 40.8 per cent., were pea and smaller. The price of pea coal at the mines is very close to actual cost, and the sizes below pea—buckwheat No. 1, buckwheat No. 2, or rice, and buckwheat No. 3, or barley—are sold below the cost of production, the prices for these sizes in 1911 being, respectively, $1.60, $1.43, and $1.13. The production of buckwheat No. 1 was 9,836,638 long tons; of buckwheat No. 2, 6,239,134 tons; and of buckwheat No. 3, 3,924,467 tons. "Screenings" to the amount of 413,838 tons were also included in the production. The total production of sizes below pea was 20,414,077 long tons.

The statistics of anthracite production during the last five years are represented in the table following:— Page 172.

STATISTICS OF ANTHRACITE PRODUCTION, 1907–1911.

Year.	Quantity (long tons).	Value.	Average price per ton.	Average number of men employed.	Average number of days worked.
1907	76,432,421	$163,584,056	$2.14	167,234	220
1908	74,347,102	158,178,849	2.13	174,174	200
1909	72,384,249	149,181,587	2.06	*171,195 †166,801	205
1910	75,433,246	160,275,302	2.12	169,497	229
1911	80,771,488	174,952,415	2.17	172,585	246

* State mining department figures. † U. S. census figures.

ADVANCE CHAPTER FROM MINERAL RESOURCES OF THE U. S. FOR 1912.

"The Production of Anthracite in 1912."

The production of anthracite in Pennsylvania in 1912 amounted to 75,322,855 long tons, valued at $177,622,626, a decrease in quantity, as compared with 1911, of 5,448,633 long tons, or 6.7 per cent. The smaller production in 1912 was due entirely to the suspension of mining operations on April 1, pending the settlement of certain demands by the miners for changes in the agreement under which work had been carried on during the three previous years. The suspension was practically complete during the entire month of April and most of May. Notwithstanding the loss of time due to the suspension the average working time was only 15 days less than that of 1911. Page 3.

On April 1, 1912, mining operations were suspended until a new agreement was signed on May 20. This agreement provided for an extension of four years, or until March 31, 1916, and granted an advance of 10 per cent. in wages and some other changes.

It is yet too soon to form a conclusive opinion as to the effect of this modification of the awards, but during 1912, after work was resumed, operations were interrupted by Page 7.

numerous strikes, which fortunately were not of long duration and were not accompanied by acts of violence. The shortage created by the suspension, estimated from the average monthly shipments during the 10 months of regular work, was about 10,500,000 long tons.

Page 8. In the earlier days of anthracite mining the colliery consumption consisted of a portion of the product which otherwise would have gone to the culm banks. Nowadays there is a market for almost any grade of anthracite that will burn. No more coal goes to the culm banks except for temporary storage and subsequent recovery by washeries. The old culm banks themselves are contributing their share to the total production, and these unsightly monuments to former waste are rapidly disappearing. Even the waste from the culm-bank washeries is being made to serve a useful purpose, as it is flushed into the mines and partly fills old workings, where it cements together and furnishes supports to the roof when the coal previously left for pillars is removed. This utilization of the waste prevents, too, the injury to farm lands in the valleys, a serious cause of complaint among the farmers

Page 9. when, as in earlier days, the waste from the washeries was spread over their lands in flood seasons.

The recovery from the culm banks and the output of small sizes from freshly-mined coal constitute about 40 per cent. of the total quantity of anthracite sent to the market. In 1912, out of total shipments amounting to 65,201,253 long tons, 25,690,541 long tons, or 39.4 per cent., consisted of pea and smaller sizes, while the prepared or domestic sizes, including a relatively small quantity of lump or steamboat, made up 60.6 per cent. Of the total of 25,690,541 long tons of small coal, the culm bank washeries contributed 3,155,150 tons, or 12.3 per cent. As noted in the preceding table, the circular prices per long ton at the mines on small sizes in 1911 were for pea, $2; for buckwheat No. 1, $1.50; for buckwheat No. 2, or rice (average price for year), 54 cents; and for buckwheat No. 3, or barley, 34 cents. In 1912 the prices for these grades were, respectively, $2.50, $1.50, 63.4 cents, and

39 cents. In compiling the statistics of production in 1912, the colliery consumption, when not valued by the companies, has been given an arbitrary value of 50 cents a ton, between the value of rice and of barley. It is of interest to note how these prices compare with the cost of production. In 1909, according to a bulletin issued by the Bureau of the Census, the total expenses involved in the mining of anthracite were $139,324,467, divided into salaries and wages, $96,900,963; supplies and materials, $26,697,966; royalties and rentals, $7,980,739; contract work (outside of contract miners), $1,701,514; taxes and sundries, $6,043,285. It will be observed that these expenses do not include any offsetting charges for depreciation or amortization, or for interest on capital invested or borrowed. They are for salaries and mine expenses only. In the same year the production of anthracite amounted to 72,384,249 long tons, so that the cost of mining per ton was $1.93. The average price in that year was $2.06 or 13 cents above actual cost. The mining rates were not changed until the advance of 10 per cent. was granted in the agreement of May, 1912, and it may be assumed that the other factors were proportionate, so that until the advance of wages in 1912 the cost per ton of producing anthracite was the same as in 1909, except that as the workings become deeper the expenses are gradually augmented. The circular price on pea coal, which constitutes about 28 per cent. of the small sizes, was 6 cents over mining cost in 1911; on buckwheat No. 1, which makes up 34 per cent. of the total, it was 44 cents below cost; on buckwheat No. 2 (22 per cent. of the total) it was $1.40 below cost; and on buckwheat No. 3 (14 per cent. of the total) it was $1.55 below cost.

If the advance of 10 per cent. in wages in 1912 were not accompanied by any other increase in expenses, the cost of mining, exclusive of depreciation, amortization, and interest, would be increased to $2.07 a long ton; the circular price for pea coal was 43 cents above cost and the three smaller sizes were, respectively, 57 cents, $1.445, and $1.68 below cost. The average value per ton for all sizes of anthracite in 1912 was $2.36, or 29 cents above mining

cost after the wage agreement went into effect. The average value per ton in 1911 was 24 cents above mining cost.

The usual spring reductions were not put into effect on April 1, 1912, owing to the suspension of mining and the apprehended scarcity of fuel. In June, however, when operations were fully resumed, the reduction of 30 cents for that month was made, followed by the 20-cent discount in July and the 10-cent discount in August, circular prices being restored in September.

The policy of allowing these spring discounts was adopted in 1903, after the settlement of the great strike in 1902. The inducement was offered for the purpose of encouraging consumers to lay in their winter supplies during the summer season, when operations and transportation were not liable to interruption by vicissitudes of the weather. It has resulted in steadier employment to the mine workers, as the collieries are now operated practically as actively in summer as in winter, as shown by the shipments in the normal year of 1911. The average shipments for the 6 months from April to September in that year were 5,736,070 tons; those for the first 3 months and last 3 months of the year averaged 5,924,080 tons. The prosperous condition of the anthracite region during the last 10 years has been due in large part to this cause. The effect upon the working time is exhibited by the fact that in the 10 years preceding 1903, or rather from 1892 to 1901, inclusive (1902, the year of the great strike, being abnormally short in working time), the average number of days worked in the anthracite region ranged from 150 to 198, with a mean average for the 10 years of 179 days; in the 9 years from 1903 to 1912 the average number of working days ranged from 195 (in 1906) to 246 (in 1911), with a mean average for the entire period of 216 days. The average working time in the later period shows an increase of 20.7 per cent. over that of the earlier. The advance in wages given by the award of the Anthracite Commission added 10 per cent. to the compensation of the mine workers and approximately 5 per cent. more was earned through the operation of the sliding scale until it was abolished

by the new agreement in 1912, when another flat advance of 10 per cent. was granted. It may be readily seen from the foregoing statement that the average yearly earnings in the 9 years from 1903 to 1912 were about 35 per cent. more than in the 10 years before the strike and before the policy of allowing the spring and summer discounts was put into force.

In spite of the seven weeks' suspension in April and May the average working time made in 1912 compares favorably even with the unusually high record in 1911 (246 days) and with the mean average for the nine years of which 1912 forms a part. As shown above, the mean average from 1903 to 1912 was 216 days. In 1912 the average working time was 231 days, the unwonted activity before and subsequent to the shutdown having made up in large part the time lost. The influence of the suspension is exhibited in the average tonnage won per man employed. In 1912 the average number of employees in the anthracite region, according to the returns to the Survey, was 173,513. The average output per man for the year was 434 long tons, and for each working day the average production per man was 1.88 tons. These figures compare with 445 tons and 1.94 tons, respectively, in 1910 and with 468 tons and 1.9 tons in 1911. The smaller ratios in the personal equation for 1912 were due to the efficiency lost in getting the collieries into working shape when work was resumed.

The statistics of anthracite production during the last six years are presented in the following table:— Page 11.

STATISTICS OF ANTHRACITE PRODUCTION, 1907–1912.

Year.	Quantity (long tons).	Value.	Average price per ton.	Average number of men employed.	Average number of days worked.
1907	76,432,421	$163,584,056	$2.14	167,234	220
1908	74,347,102	158,178,849	2.13	174,174	200
1909	72,384,249	149,181,587	2.06	*171,195 †166,801	205
1910	75,433,246	160,275,302	2.12	169,497	229
1911	80,771,488	174,952,415	2.17	172,585	246
1912	75,322,855	177,622,626	2.36	174,030	231

* State mining department figures. † U. S. census figures.

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ANNUAL SHIPMENTS FROM THE SCHUYLKILL, LEHIGH AND WYOMING REGIONS, 1820-1912, LONG TONS.

Year.	Schuylkill region.		Lehigh region.		Wyoming region.		Total.
	Quantity.	Percentage.	Quantity.	Percentage.	Quantity.	Percentage.	Quantity.
1820			365				365
1821			1,073				1,073
1822	1,480	39.79	2,240	60.21			3,720
1823	1,128	16.23	5,823	83.77			6,951
1824	1,567	14.10	9,541	85.90			11,108
1825	6,500	18.60	28,393	81.40			34,893
1826	16,767	34.90	31,280	65.10			48,047
1827	31,360	49.44	32,074	50.56			63,434
1828	47,284	61.00	30,232	39.00			77,516
1829	79,973	71.35	25,110	22.40	7,000	6.25	112,083
1830	89,984	51.50	41,750	23.90	43,000	24.60	174,734
1831	81,854	46.29	40,966	23.17	54,000	30.54	176,820
1832	209,271	57.61	70,000	19.27	84,000	23.12	363,271
1833	252,971	51.87	123,001	25.22	111,777	22.91	487,749
1834	226,692	60.19	106,244	28.21	43,700	11.60	376,636
1835	339,508	60.54	131,250	23.41	90,000	16.05	560,758
1836	432,045	63.16	148,211	21.66	103,861	15.18	684,117
1837	530,152	60.98	223,902	25.75	115,387	13.27	869,441
1838	446,875	60.49	213,615	28.92	78,207	10.59	738,697
1839	475,077	58.05	221,025	27.01	122,300	14.94	818,402
1840	490,596	56.75	225,313	26.07	148,470	17.18	864,379
1841	624,466	65.07	143,037	14.90	192,270	20.03	959,773
1842	583,273	52.62	272,540	24.59	252,599	22.79	1,108,412
1843	710,200	56.21	267,793	21.19	285,605	22.60	1,263,598
1844	887,937	54.45	377,002	23.12	365,911	22.43	1,630,850
1845	1,131,724	56.22	429,453	21.33	451,836	22.45	2,013,013
1846	1,308,500	55.82	517,116	22.07	518,389	22.11	2,344,005
1847	1,665,735	57.79	633,507	21.98	583,067	20.23	2,882,308
1848	1,733,721	56.12	670,321	21.70	685,196	22.18	3,089,238
1849	1,728,500	53.30	781,556	24.10	732,910	22.60	3,242,966
1850	1,840,620	54.80	690,456	20.56	827,823	24.64	3,358,899
1851	2,328,525	52.34	964,224	21.68	1,156,167	25.98	4,448,916
1852	2,636,835	52.81	1,072,136	21.47	1,284,500	25.72	4,993,471
1853	2,665,110	51.30	1,054,309	20.49	1,475,732	28.41	5,195,151
1854	3,191,670	53.14	1,207,186	20.13	1,603,478	26.73	6,002,334
1855	3,552,943	53.77	1,284,113	19.43	1,771,511	26.80	6,608,567
1856	3,603,029	52.91	1,351,970	19.52	1,972,581	28.47	6,927,580
1857	3,373,797	50.77	1,318,541	19.84	1,952,603	29.39	6,644,941
1858	3,273,245	47.86	1,380,030	20.18	2,186,094	31.96	6,839,369
1859	3,448,708	44.16	1,628,311	20.86	2,731,236	34.98	7,808,255
1860	3,749,632	44.04	1,821,674	21.40	2,941,817	34.56	8,513,123
1861	3,160,747	39.74	1,738,377	21.85	3,055,140	38.41	7,954,264
1862	3,372,583	42.86	1,351,054	17.17	3,145,770	39.97	7,869,407
1863	3,911,683	40.90	1,894,713	19.80	3,759,610	39.30	9,566,006
1864	4,161,970	40.89	2,054,669	20.19	3,960,836	38.92	10,177,475
1865	4,356,959	45.14	2,040,913	21.14	3,254,519	33.72	9,652,391
1866	5,787,902	45.56	2,179,364	17.15	4,736,616	37.29	12,703,882
1867	5,161,671	39.74	2,502,054	19.27	5,325,000	40.99	12,988,725
1868	5,330,737	38.52	2,502,582	18.13	5,968,146	43.25	13,801,465
1869	5,775,138	41.66	1,949,673	14.06	6,141,369	44.28	13,866,180
1870	4,968,157	30.70	3,239,374	20.02	7,974,660	49.28	16,182,191

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ANNUAL SHIPMENTS FROM THE SCHUYLKILL, LEHIGH AND WYOMING REGIONS, 1820–1912, LONG TONS.—*Continued.*

Year.	Schuylkill region.		Lehigh region.		Wyoming region.		Total.
	Quantity.	Percentage.	Quantity.	Percentage.	Quantity.	Percentage.	Quantity.
1871	6,552,772	41.74	2,235,707	14.24	6,911,242	44.02	15,699,721
1872	6,694,890	34.03	3,873,339	19.70	9,101,549	46.27	19,669,778
1873	7,212,601	33.97	3,705,596	17.46	10,309,755	48.57	21,227,952
1874	6,866,877	34.09	3,773,836	18.73	9,504,408	47.18	20,145,121
1875	6,281,712	31.87	2,834,605	14.38	10,596,155	53.75	19,712,472
1876	6,221,934	33.63	3,854,919	20.84	8,424,158	45.53	18,501,011
1877	8,195,042	39.35	4,332,760	20.80	8,300,377	39.85	20,828,179
1878	6,282,226	35.68	3,237,449	18.40	8,085,587	45.92	17,605,262
1879	8,960,829	34.28	4,595,567	17.58	12,586,293	48.14	26,142,689
1880	7,554,742	32.23	4,463,221	19.05	11,419,279	48.72	23,437,242
1881	9,253,958	32.46	5,293,676	18.58	13,951,383	48.96	28,500,017
1882	9,459,288	32.48	5,689,437	19.54	13,971,371	47.98	29,120,096
1883	10,074,726	31.69	6,113,809	19.23	15,604,492	49.08	31,793,027
1884	9,478,314	30.85	5,562,226	18.11	15,677,753	51.04	30,718,293
1885	9,488,426	30.01	5,898,634	18.65	16,236,470	51.34	31,623,530
1886	9,381,407	29.19	5,723,129	17.89	17,031,826	52.82	32,136,362
1887	10,609,028	30.63	4,347,061	12.55	19,684,929	56.82	34,641,018
1888	10,654,116	27.93	5,639,236	14.78	21,852,366	57.29	38,145,718
1889	10,486,185	29.28	6,294,073	17.57	19,036,835	53.15	35,817,093
1890	10,867,822	29.68	6,329,658	17.28	19,417,979	53.04	36,615,459
1891	12,741,258	31.50	6,381,838	15.78	21,325,240	52.72	40,448,336
1892	12,626,784	30.14	6,451,076	15.40	22,815,480	54.46	41,893,340
1893	12,357,444	28.68	6,892,352	15.99	23,839,741	55.33	43,089,537
1894	12,035,005	29.08	6,705,434	16.20	22,650,761	54.72	41,391,200
1895	14,269,932	30.68	7,298,124	15.69	24,943,421	56.63	46,511,477
1896	13,097,571	30.34	6,490,441	15.03	23,589,473	54.63	43,177,485
1897	12,181,061	29.26	6,249,540	15.00	23,207,263	55.74	41,637,864
1898	12,078,875	28.83	6,253,109	14.92	23,567,767	56.25	41,899,751
1899	14,199,009	29.79	6,887,909	14.45	26,578,286	55.76	47,665,204
1900	13,502,732	29.94	6,918,627	15.33	24,686,125	54.73	45,107,484
1901	16,019,591	29.92	7,211,974	13.45	30,337,036	56.63	53,568,601
1902	8,471,391	27.15	3,470,736	11.12	19,258,763	61.73	31,200,890
1903	16,474,790	27.75	7,164,783	12.07	35,723,258	60.18	59,362,831
1904	16,379,293	28.49	7,107,220	12.36	34,006,009	59.15	57,492,522
1905	17,703,099	28.83	7,849,205	12.78	35,857,897	58.39	61,410,201
1906	16,011,285	28.75	7,046,617	12.65	32,640,693	58.60	55,698,595
1907	20,141,288	30.01	8,320,653	12.41	38,638,452	57.58	67,109,393
1908	18,006,464	27.85	7,786,255	12.04	38,872,295	60.11	64,665,014
1909	16,864,147	27.21	7,532,271	12.16	37,573,467	60.63	61,969,885
1910	17,845,020	27.49	8,627,539	13.29	38,433,227	59.22	64,905,786
1911	19,375,369	27.70	9,775,018	13.97	40,803,912	58.33	69,954,299
1912	18,013,406	28.32	8,571,861	13.47	37,025,311	58.21	63,610,578
Total	594,758,510	31.59	291,829,976	15.50	996,372,777	52.91	1,882,961,263

The Government reserves the right to quote from any of the same sources from which extracts are taken in the matters just put in evidence.

(Adjourned to meet at 143 Liberty Street, New York City, Monday, April 20th, 1914, at 11 A. M.)

NEW YORK, N. Y., Monday, April 20th, 1914.

Meeting held at 143 Liberty Street, New York, N. Y., Monday, April 20th, 1914.

Present—The Examiner; Messrs. Coudert, Kingsbury and Gordon, Special Assistants to the United States Attorney General, for the Government; Jackson E. Reynolds, Esq., and Henry Drinker, Jr., for defendants.

(Referring to the offer made at the last meeting of certain extracts from the reports of the Pennsylvania Railroad Company, the Pennsylvania Company, and the Baltimore and Ohio Railroad Company, counsel for the Government renew their objection, on the ground of irrelevancy and immateriality, and now give notice of a motion to strike out all of such extracts.)

EDWARD HAMLIN, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. Where is your residence? A. My legal residence is in Marion, Massachusetts.

Q. Where is your business? A. In Boston.

Q. What is the nature of your business? A. Retail handlers of coal for greater Boston, both anthracite and bituminous coal.

Q. Is the Metropolitan Coal Company your company there? A. Yes, sir.

Q. Are you a purchaser of both bituminous and anthracite coal? A. Yes, sir.

Q. What has been your experience in the last ten or fifteen years as to the effect on the anthracite coal business of other substitute fuels in your territory? A. The anthracite business in my territory is rapidly going down hill, rapidly decreasing. There is less anthracite coal consumed in Greater Boston to-day by three or four hundred thousand tons than there was ten or twelve years ago, and that in spite of the fact that in that time the population of Boston has increased more than thirty per cent.

Q. What have been the influences, under your observation, that have produced this result? A. Some years ago

anthracite coal was the principal factor. Practically there is no anthracite coal burned now in Boston and vicinity where bituminous coal can be used. We use a great deal of anthracite pea and dust and smaller buckwheats, and cheaper grades of anthracite coal to mix with bituminous coal so as to reduce the amount of smoke. That is practically all that anthracite coal is now used for, for clean purposes.

Q. In the large office buildings and apartment houses in Boston, what is the fuel generally? A. Bituminous coal.

Q. In detached houses, in the matter of cooking, has there been any substitute for anthracite coal introduced? A. Yes, sir; very largely. It was introduced some period back. For the last ten years gas has been introduced into almost every house in the vicinity, and gas is used now in cooking stoves, I was going to say almost universally, it is not quite so bad as that, but it is very largely used. For instance, the amount of gas that is produced to sell in Greater Boston in the last ten years has increased one hundred per cent., which means, of course, that coke, which is another by-product, has also increased a hundred per cent. But, coke goes into the ordinary retail business as much as gas—coke interferes with it as much as the gas. So coke, gas, electricity, and, to a certain extent, bituminous coal, have succeeded in reducing the amount of coal consumed in Boston at least three or four hundred thousand tons a year, that is, prepared sizes, in spite of the fact that in that same time the population has increased more than thirty per cent. I have got all these figures tabulated if you would like to see them.

Q. About ten years ago the large companies put into effect a plan of coal sales under which the price dropped in April on the higher prepared sizes fifty cents a ton, and then it was moved up ten cents per ton until the time when the price was stable again for the remainder of the year. Was that sort of arrangement put into effect by the large companies in selling to the distributors in Boston and New England also? A. Yes, sir; I think so.

Q. What has been the effect on the coal business of that plan of merchandising coal? Has it been to restrain the coal business, or to put it on a better merchandising basis? A. To put it on a better basis distinctly. For instance, there

is no anthracite coal consumed in Boston practically from the middle of April to the middle of September say. On this lower basis of price it enables us to put our retail price on a lower basis, and it is an inducement to people to buy coal in anticipation of their wants. It leaves the road clear for people who need coal in the Winter, and we have trouble enough to supply them with coal in the Winter. We could not do the business otherwise.

Q. Does it help the distributor of coal to distribute his coal? A. Yes, sir. It makes us buy our coal earlier, and by the same process we get rid of the coal in the Summer months. It makes a great difference in distribution of the coal throughout the year.

Q. Does it have an appreciable effect on the reduction of your cost of distribution? A. Yes, sir; very largely.

Q. Just how? A. In our business, the question of tonnage regulates it largely. If we can do ten thousand tons a week, for instance, we can have a certain cost of doing business. If we can increase that to fifteen thousand tons, that extra five thousand tons is largely profit. If we decrease it below the ten thousand the whole is distinctly a loss. So by making a uniform basis throughout the year, we can do our business more economically, and have, of course, the advantage of it.

Q. It enables you to keep about the same equipment of teams or automobiles or horses? A. Yes, sir; very largely so. Of course, we are not as busy in the Summer months as we are in the Winter months. If it was not for the lower price we give, we would not be busy at all.

Q. Are you miners of coal at all? A. No, sir.

Q. You are simply distributors in your locality? A. Yes, sir.

Q. Do you purchase coal from the large producers of anthracite coal? A. We do.

Q. What ones? A. I think all of them. All, so far as I know.

Q. Do you purchase from the Philadelphia and Reading Coal and Iron Company? A. We do.

Q. And from the Lehigh and Wilkes-Barre Coal Company? A. Yes, sir.

Q. And from the Lehigh Coal and Navigation Company? A. Yes, sir.

Q. Can you say from your experience with the purchase of coal from those various companies, as to whether they compete for your business? A. They do, without any exception.

Q. In what way do they compete? A. Their sales agents are after us all the time to sell us coal, the same as any competition in business, except price. The price competition has not been so marked. But, with that exception, in every way possible they try to compete.

Q. Are you convinced from your own experience that the sales agent of the Lehigh and Wilkes-Barre really tries to compete with the Philadelphia and Reading and displace the Reading coal and get orders away from the Reading agent? A. I have never seen any difference between the agent of the Lehigh and Wilkes-Barre and the Reading than I have between the agent of the Reading and the Ontario and Western or Erie or D. L. and W. or the Lehigh Valley or any companies, they are all just the same.

By Mr. Coudert:

Q. All act about alike? A. All competing for my business.

By Mr. Reynolds:

Q. You do not, as I understand you, find any great competition between the Wilkes-Barre and the Reading as to price? A. No, sir; we do not.

Q. Is there any competition between the Lehigh Coal and Navigation Company's sales agents on the one hand, and the Reading and Wilkes-Barre on the other for your business? A. Yes, sir.

Q. Does that competition extend to the point of being a competition in price? A. It has at times, yes, sir.

Q. What sort of times are those, dull or brisk times? A. In dull times.

Cross examination.

By Mr. Coudert:

Q. You have been purchasing coal from these various companies for how many years? A. I should say twenty-six years. I went in business in 1886.

Q. Has there been any considerable change in the price of the various sizes of anthracite coal during that time? A. Oh, yes. The first part of the time there was considerable competition, and all the anthracite companies were in bankruptcy.

Q. At that time the competition was severe? A. Yes, sir; practically all of them. There were only two or three of them I think that were holding their heads above the water.

Q. About how long did that severe competition between the companies endure? Do you remember? A. I think it endured longer than most of the companies.

Q. That was about how long in time? A. I think the policy changed—I should think about the time of the great coal strike in 1902. I should think so, looking back, without verification.

Q. After that there was a uniformity in the prices, was there not? A. Yes, sir.

Q. It has continued practically ever since? A. Yes, sir; to a greater or less extent.

Q. That was in 1902; am I right in the date? A. Yes, sir; in 1902.

Q. Are the larger sizes of anthracite coal used in furnaces for heating houses in Boston? A. What do you mean by the larger sizes?

Q. The stove size and the egg. A. Stove is not used much in furnaces. Egg and broken coal are used largely, but broken coal is used less and less. Mostly egg coal in heaters.

Q. Is that generally used in furnaces in private houses? A. Yes, sir.

Q. Are those furnaces quite extensively used in Boston? A. In separate houses they are; yes, sir.

Q. Did I understand you to say that the smaller sizes of anthracite competed in your market with bituminous, or merely that they were mixed? A. No; they supplement the bituminous coal in our market owing to our rigid smoke laws. It is much easier to burn all the cheaper grades of buckwheat with bituminous, which stops the smoke to a certain extent and lets the bituminous coal come under our smoke law.

Q. Is it used for factory purposes? The anthracite is

very valuable because of the law against smoke nuisance, is it not? A. No, sir; it is not very valuable, because we use the refuse of anthracite coal for the same purpose.

Q. It is valuable in the sense that it allows the bituminous to be used? A. No, sir; it is only used as a make-shift. We only use it as a make-shift in handling anthracite coal. We make six to eight per cent. of what we call screenings, refuse, coal dust, and that coal we sell with the bituminous. We supplement with small sizes of anthracite coal where we cannot get enough of the screenings.

Q. How do those smaller sizes that are used for factory purposes compare in price with the bituminous coal? A. You would have to name a size for me to give a logical correct answer in that way.

Q. Please do so. A. The pea and dust is shipped all the way from $2.25 to $2.60 a ton delivered in Boston, different prices. Bituminous coal in Boston would cost $3.75. Buckwheat No. 3, smaller size buckwheat, I suppose, would cost about $2.25 delivered in Boston as against the vicinity of $3.75 best grades of bituminous coal.

Q. Would the use of anthracite be enhanced or affected by a raising or change in the price of bituminous coal? A. It would not; no.

Q. Are there any purposes for which the two coals compete? A. Not in our market. Not that I know of.

Q. In other words, with the exception of the admixture of anthracite with the bituminous, of which you have spoken, the two coals perform different functions, so to speak? A. Yes, sir.

Q. And are adapted to different purposes? A. Yes, sir.

Q. And do not come into competition with each other? Am I right about that? A. Yes, sir. The smaller sizes.

Q. Your business has been on a considerably better and sounder and safer basis, has it not, since there has been a substantial uniformity of price? A. I do not know as I would say our own individual business has. I think the coal business as a whole has.

Q. You are quite satisfied with the existing situation? A. I am not sure that I am. I think the public is better off. I am not sure that a large buyer of coal would be better off.

Q. How do the anthracite prices, say on the larger sizes, for illustration, compare to-day with those that were in vogue when you first went into business? A. I could not give you off-hand the figures on that. They are higher.

Q. Has there been an increase or a decrease? A. An increase.

Q. It has been very considerable on the ton, has it not? Roughly speaking, what is it? A dollar or a dollar and a half? A. I would not want to make a statement without having the figures before me. There has been a considerable increase, I should say.

Q. If you would prefer to have the figures before you answer that question, will you please tell me what you sold the various sizes of anthracite coal for during the first five years which you were in business? You can file them as your answer. A. I could not do it off-hand here now. I will furnish the figures.

The witness furnished the following:—

My old firm, E. S. Hamlin & Co., in 1898 consolidated with several others of the retail coal firms in Boston into the Metropolitan Coal Company. I find that the ledgers of E. S. Hamlin & Co. have long since been destroyed, and I have no means of ascertaining what our prices were in the years above mentioned. However, as the retail price of coal has always, since I have been in business, been uniform in the city, owing to the fact that there is but one article and the same quality, I have no doubt but that the prices of E. S. Hamlin & Co., were the same as those noted within.

RETAIL PRICES OF STOVE COAL IN BOSTON.

	1887	1888	1889	1890	1891
Jan.	$6 00	$7 75	$6 50	$6 25	$5 50
	6 50				
Feb.	6 50	7 25	6 50	6 25	5 50
Mch.	6 00	6 75	6 00	6 25	5 50
Apr.	6 00	6 50	6 00	5 75	5 50
May	5 50	6 00	6 00	5 75	5 50
June	5 50	6 00	6 00	5 50	5 50
July	5 75	6 00	6 00	5 50	5 50
Aug.	5 75	6 25	6 00	5 50	5 50
Sept.	5 75	6 50	6 00	5 50	5 50
Oct.	6 00	6 50	6 25	5 50	5 50
	6 25				
Nov.	7 00	6 50	6 25	5 50	5 50
	7 25				
Dec.	7 25	6 50	6 25	5 50	5 50

Q. Will you also give me from your figures at your convenience the prices which you paid for these various sizes of anthracite during the first five years when you were engaged in the business? A. What do you mean by that? Do you mean a fair average price of all the coals we bought?

Q. Suppose you give me the fair average price of the various sizes for each year. That would be a fair average, would it not? A. I should think so.

Q. Your company is a very large one? Does it deal throughout all of New England? A. No, sir; only in Greater Boston.

Q. Are you familiar with the prices outside of Boston and throughout New England also? A. Do you mean the wholesale prices?

Q. Yes. A. I presume they are the same, except the freight.

Q. You are practically sure of that, are you not? A. Yes, sir. Simply the price is so much at the mines, and the rate of freight added.

Q. In what various proportions do you purchase from the Lehigh and Wilkes-Barre Company, the Philadelphia and Reading Coal and Iron Company, and the Lehigh Coal and Navigation Company. A. It would be pretty hard to state off-hand.

Q. Can you tell me in a general way? A. I think we buy more of the Reading coal than we do of any of the other coals.

Q. Would you say twice as much or three times as much? A. No. Not quite as much as that.

Q. Very considerably more? A. Yes, sir.

Q. Have you any particular reason for preferring the Reading? A. Yes, sir. Because they have a large fleet of barges, five or six times as large as any other company, and so they can give us five or six times as much coal. Our coal has to be transported by water, practically all of it. There is some little that comes by rail, but it is a negligible quantity.

Q. Where do those barges come to? Right to your wharves? A. Yes, sir. Right from Port Richmond, Philadelphia, around the cape and around to Boston.

Q. And it is because of the superior facilities afforded by these larger barges that you prefer purchasing from the Reading Company rather than the other two? A. We could not get enough coal to satisfy our needs from the other two. We might by chartering around. But, the question of the barge supply is very limited, and we have to rely wholly upon barges for anthracite coal. Bituminous coal comes in the large steamers, but for the anthracite we are limited to barges.

Q. How do you take your coal from the other two companies? A. The Navigation and the Wilkes-Barre?

Q. Yes. A. By barges too.

Q. You mean their barges are smaller? A. No, sir. The Reading Company, as I understand it, has in the vicinity of sixty-five or seventy ocean going barges. The Wilkes-Barre Company has in the vicinity of a dozen. The Coal and Navigation Company may have six or eight sea-going barges. That is purely a guess. I do not know so much about their business.

Q. What is the determining factor as to your purchases between these various companies? Is it the fact that the Reading has more barges, and that you need barges to deliver your coal? A. And a greater variety of coal too.

Q. In what does the greater variety consist? A. The Reading Company have what we call hard coal; they have free-burning coal, they have what we call intermediate coal, half way between the two, that is, in the White Ash. They have Lykens Valley Red Ash coal, which is a fancy grade of coal. Practically no other company has that.

Q. Do you know as a coal man what that is due to? Is that because of the more varied coal lands from which the coal comes? A. Yes, sir.

Q. The other companies, not only those that I have mentioned, the Lehigh and Wilkes-Barre and the Lehigh Coal and Navigation Company, none of the other companies have that variety of coal, have they? A. I think not.

Q. And that, together with the ability of the Reading to deliver coal in greater quantities, are the determining factors in the purchase of Reading coals? A. Do you mean by us?

Q. Yes; by your company. A. Yes, sir; it is one of the factors.

Q. What other factors? A. It is a question of getting coal when you want it. That is a large factor in our business. For instance, there are only two or three what we would call dull shipping months in anthracite coal during the year, I mean when there is very little coal consumed. After that time it is a question of whether we can get coal enough from anybody. We put in orders with everybody and let everybody ship all they can. That is practically what it amounts to.

Q. That is during the Winter months? A. During eight months of the year.

Q. Then do you take practically all the anthracite coal you can get? A. I do not know that we take all we can get, but it almost comes to that point. We have to take very large amounts of coal.

Q. Can you state generally from recollection about what amount you took say during the last fiscal year, in round numbers? A. Do you mean purchased?

Q. Yes. A. I suppose considerably over a million tons.

Q. Your company alone? A. Yes, sir.

Q. In purchasing from those companies you are familiar with the various factors and would not be particularly influenced by efforts of mere sales agents, would you? A. A sales agent, if he accomplished no good, I do not think he would be employed. In other words, he is on the spot when the man is thinking of buying coal—he is on the spot and he takes the order.

Q. Do you mean he tells you how much coal he can get? A. No, sir. He makes an offer. We want coal, and we say, "Yes, ship so much."

Q. As far as the qualities of the coal of the various companies are concerned, and the methods of shipping it, and the

facilities they have, of course, you are very familiar with that? A. Yes, sir; I ought to be.

Q. So that, what do these coal agents tell you; merely that they can deliver you a certain amount of coal? A. Yes, sir. I know the grades of coal they have all got.

Q. Do they come to you, or do you send for them? What is the mechanism? A. In our company, a good many of them come to us. The Coal and Navigation Company always come to us. I do not know the principals at all. I never met them. In regard to the other companies, for a great many years I have made a practice of coming to New York or Philadelphia myself every week or two and keep track of the general trade conditions, and see which way the trade is going, and pick up all the gossip of any kind in the coal business I can. So my business here has been in New York and Philadelphia directly with the different companies. But the agents do come to my office to see me just the same.

Q. At what market, if at any one, is the price of coal fixed? A. What do you mean by that?

Q. Is it New York tidewater or Philadelphia tidewater? A. The price of coal is known as F. O. B., free on board, at Philadelphia and New York and Boston.

Q. You have always before you a list of the current prices of the various grades, I suppose? A. Yes, sir.

Q. How do you obtain those prices? A. Ask the different people to send me a list of their prices—a price list.

Q. They send you these varying price lists? A. Yes, sir; they usually send them without my asking.

Q. Are those called circular price lists? A. Yes, sir.

Q. Those circulars practically do not vary as to the different grades of coal? They are practically uniform, are they not? A. Yes, sir. Among the larger so-called companies.

Q. Among these price circulars that are sent to you, or that you obtain, is the price circular of the Lehigh Coal and Navigation Company with the others? A. I do not think I have ever seen a price circular of the Lehigh Coal and Navigation Company.

Q. How do you get their prices? A. Their agent comes in and advises me what I can buy coal for.

Q. They give you those in writing? A. No. They may have them, but I do not remember ever seeing it.

Q. How do you get the prices generally from these different companies? A. When there is a change of price the companies send us their circular price.

Q. Those changes are sent out at the same time, in accordance with the seasons of the year, are they not? A. Sent out whenever the change is made. This fifty cent deduction off the coal is all the same from all the companies.

Q. So the large companies send out at fixed times of the year their schedule or circular prices? A. Yes, sir; usually.

Q. You usually receive those about the same time each year? A. Yes, sir.

Q. I understand that you are not in any way, through stock ownership or contract affiliation, tied up or related to any of the great coal companies? A. I am not.

Q. You are completely and absolutely independent of them? A. Absolutely.

Q. Nothing in the nature of exclusive contracts or anything which would hamper your independence in any way? A. No, sir. Nothing whatever.

Q. How far and how uniformly does the increase in the retail price reflect the increase in the wholesale price of coal? A. Our company arranges our price of coal on what it cost. Say in the Spring of the year when coal costs us less, we always reduce our price. There are times when we reduce it more than we want to. Outside influences may force it down, but it always goes up the amount it is reduced. In other words, the cost price.

Q. So that a change, generally speaking, in the wholesale price, is followed by a corresponding change in the retail price? A. A change in the way of a drop in the price is always followed very quickly in the retail market. The advance in price follows very slowly, but it ususally gets there.

Q. Is that advance in price usually merely an adding to the retail price of the price that the wholesalers have been

forced to pay? A. That goes in as part of the cost. As matter of fact, the retail business in Boston, and, I suppose the same everywhere else,—the increased cost of doing business is simply enormous just as it is with the wholesale companies. In our business, for instance, we employ in the vicinity of a thousand men, laborers. We are giving them now two dollars a week a piece more than we did eighteen months ago. Next year they will ask for something more. There is no end to it at all. Where we are going to get it I do not know. But, it is increasing the cost to the public all the time. Everything that goes into the consumption of our own business, hay, grain, horses, everything has gone up in excess. It has got to be a serious problem how a man who is in business is going to get out whole.

Q. Your company has been prosperous, has it not? A. Fairly so, I should say.

Q. You have paid dividends all these years? A. Yes, sir.

Q. May I ask you, roughly speaking, what rate of dividends you pay? A. Eight per cent.

Q. How far, in your great knowledge of the coal business, is the retail price uniform? A. In the nature of things it has got to be uniform.

Q. It is, as a matter of fact? A. There is a certain fixed price. For instance, our company announces that the price of stove coal is $7.25 to-day. We make an effort to keep up to that price. There is a great deal of cutting going on, and it is only a question when the cutting gets severe enough that we have got to drop our price. But, when we drop it, we simply drop to the level of anybody else. Everybody has got to have a uniform price.

Q. Will you explain, from your knowledge of the business, why it is that if A wants to get five tons of coal of any grade of anthracite in New York or Boston, and he goes to half a dozen dealers he will find practically the same price quoted to him? A. I think you could answer it very easily. If you saw two peanut stands on opposite corners, you would go to one man and he has peanuts five cents a bag, and go to the other corner and he will say five cents a

bag. There is no collusion between the two. Simply it is the price they can sell them for, a fair price, and they make so much. If one man gets four cents a bag, the other man gets four cents a bag. So they get to a point where they reach an armed neutrality, and the thing stops.

Q. In your coal business then there is a point beyond which the lowering of prices does not go? A. No, sir. That is usually so. But, the coal business, in my experience, has been at times when the business has gone down when we sold coal way below any possible price to us, by competition or some condition or other in the trade, and when everybody has lost enough money, or somebody has lost enough money, they put the price back on a fair basis. That is all that keeps the retail price up, that fear that something might happen.

Q. How often do these shake-ups you have referred to happen in the business? A. Very often. Every two or three or four years we have a shake-up.

Q. These are due to certain exceptional causes, are they not. A. No, sir. Take in our market—our great trouble is the fact that our business is a declining business, as I have shown you; that there is less anthracite coal consumed by a large percentage in Boston than there was ten or fifteen years ago. If our competitors all understood that I think it would adjust itself, but half of our competitors do not understand anything, and they do not all understand the same thing. The result is that they think they ought to increase their business five to ten per cent. a year to put themselves on a proper basis. If they do that they have got to take the business from somebody else. There is no increase in the anthracite business. You have got to take it from somebody else. That means that some one gets to hammering down his price and the public gets coal at a lower price for a time.

Q. Then that hammering goes on until there is a reaction? A. Until it reaches bottom, and then naturally it will rebound and go to the surface again.

Q. Have you ever had any difficulty during any of the

months of the year in getting all the anthracite coal that you wished? A. Yes, sir.

Q. What months are these generally? A. The fall of the year, when the first cold days come, people burn a lot of coal, and their thoughts turn to their coal bins, and then they start to fill up, and we sometimes have serious difficulty in getting coal enough. Last year, 1913, in the Winter—not this Winter, but a year ago this Winter, there were times when there was not twenty-four hours' supply of coal ahead in Boston. It went on for months that way. If we had not had a warm Winter the market of Boston would have been absolutely out of coal. We would not have had a bucketful of coal in Boston.

Q. What is that due to? Is it the lack of barge transportation? A. It is the great demand for coal coming from everybody at the same time, and the fact that the company itself, as I understand it, cannot mine anywhere near as much coal as is demanded in the consuming months. They have got to mine coal ahead of those months. That year that I speak of there had been a suspension of a month or so, six or seven weeks, in 1912, and the supply could not catch up with the demand. Coal was selling at $5 a ton premium in Boston at wholesale. Five dollars premium easily, but, not of the so-called companies. I have never in my experience been asked to pay a cent more than the uniform established price by any company, in my experience in the business. But, on the outside I have been asked to pay three to five dollars a ton, as a common occurrence, and the dealers have paid it and the public has paid it.

Q. What was the highest price during that stringency you speak of? A. I think coal went up to eight or ten dollars a ton delivered in Boston.

Q. As high as eight and ten dollars a ton? A. Yes, sir. But you could not get much of it at that.

Q. What was that coal used for that commanded such an extraordinary premium as that? A. For household purposes.

Q. Could they not have obtained some substitute for

that which would have cost them less? A. That is one of the things that started them—they had not burned coke—it started them to put in ranges to burn gas, and that takes away from the coal business. The next strike there will be less stringency, because many people will be using coke and gas.

Q. Do those stringencies injure the anthracite business? A. They do. The people are not so helpless to-day as they were. Not anywhere near so.

Q. If anthracite cost the tremendous price to-day which at times it reached? A. Yes, sir. As a fact anthracite is a luxury to-day. A man can get along without it. He can substitute bituminous coal. The whole West do it to-day. It is a very easy thing to burn, and it is clean. Anthracite coal is in the nature of a luxury to-day. It is not in the sense it used to be at all.

Q. It is the best and cleanest and nicest of coal? A. It is not any cleaner than coke. Coke is cleaner than anthracite. But, people are not accustomed to the burning of coke. If they were they would burn more coke. It is an ideal fuel.

Q. In Europe they do not use anthracite at all? A. No, sir, none at all.

Q. They have always been able to get along without it, because they did not have it? A. Yes, sir. In the great Central West they burn very little anthracite.

Q. We have always had it here, and, as I understand you, what has made people endeavor to find competent substitutes for anthracite has been the large price at which it has been sold —— A. Temporarily. They were bothered in getting it, and then they tried substitutes, and whenever they tried substitutes, nine-tenths of them were satisfied with the substitute.

Q. Because those high prices had put it out of the means of the people to obtain? A. Yes, sir.

Q. If it got to eight or ten dollars a ton, of course only very wealthy people could purchase it? A. Yes, sir.

Re-direct examination.

By MR. REYNOLDS:

Q Do I understand you clearly, that when the premium charge carried the price of coal up to eight or ten dollars a ton in Boston, that was confined to the independent producers? A. Absolutely. None of the so-called established companies asked, to my knowledge, more than the uniform price for coal at any time in the last fifteen years.

Q. Has there been always a very clear intimation to the trade from the large companies that if their coal was sold at retail at a premium the large producers would cut off the supply to the retailer? A. That has been stated in times of stringency, times of strike, different companies have told me, for instance, that they did not care to have us put on extra fancy prices on coal, because they were giving us the coal at a low price.

Q. And those are the times of scarcity when the premium is on coal? A. Yes, sir. When there is a shortage.

Q Is it true that the amounts of coal that you purchased from these various large companies is variable from year to year? A. Yes, sir.

Q. No fixed relationship between your purchases from one company and from another company? A. No; none at all.

Q. Are buckwheat sizes of coal covered by a circular price in Boston? A. I do not think they are. I do not recall seeing them on any circular. Maybe they are, but I do not recall seeing them on any circular.

Q. You spoke about the relation of demand to supply during the year. Is it or not true that in your territory the demand is well up to and at periods exceeds the supply of anthracite coal in your market for the eight consuming months of the year? A Yes, sir. The demand is greater than the supply for at least two-thirds of the time.

Q. The Lehigh Valley Coal Company and the Susquehanna Coal Company have extensive operations in the same field that the Reading does, do they not? A. Yes, sir.

Q. Do they mine and work generally the same varieties

of coals as the Reading? A. The Lehigh Valley comes nearer to it than any other company. I do not think they have all the kinds of coal the Reading has, but they come nearer to it than any other company.

Q. Between the two, the Lehigh Valley and the Susquehanna, do they not have about all the varieties of coals that the Reading does? A. The two together would; yes, sir. That is, one would complement the other.

Q. The Lehigh Valley would mine very little Lykens Valley vein, and the Susquehanna mines a very considerable amount of Lykens Valley? A. Yes, sir.

Q. And they dove-tail together? A. Yes, sir.

Q. And furnish about the same choice of coals that the Reading does, is that true? A. Yes, sir.

Q. You spoke of the fact that at times the Reading and Wilkes-Barre agents come to your office in Boston to solicit your business as the Lehigh Coal and Navigation Company agent did. Is it a fact that each of these companies has a separately established agency in Boston? A. Yes, sir.

Q. And the local agent in Boston of each company comes to you and solicits your business at times? A. Yes, sir; they do at all times.

Re-cross examination.

By Mr. Coudert:

Q. When you purchase coal from these large companies do you buy it delivered at your wharf, or do you buy it delivered in vessels at your wharf? A. We buy it both ways. Mostly delivered in vessels.

Q. Do you direct how it shall be brought there? A. We know before we ship it.

Q. Do you get it in this way on account of the location of your own wharves and yards or have you any other reason for preferring the water transportation? A. The principal reason is that the company's barge rate—we have the f. o. b. rate New York, and then the barge rates are so much added to that. The barge rates have always, in my experience, been lower than the rate we could take coal from the

same point. So naturally we favor these companies delivering in Boston. For instance, the barge rate in New York is fifty cents. You could not charter a boat in the New York market for fifty cents. The freight rate would be sixty-five or seventy cents. But, for some inconceivable reason the companies have never asked the market price for barge coal from New York to Boston. It costs more than fifty cents—it cost them more than fifty cents. We have been in the business ourselves, and I know we could not do it for fifty cents.

Q. You say practically none of your coal comes to Boston by all rail? A. I would not say practically no coal. We have a half dozen all rail plants where we have a dozen wharves—a half dozen all rail plants. But, it is a small proportion.

Q. I am asking about the coal your company buys? A. That is what I am speaking about. We have six or eight all rail plants. We have a dozen or more large wharves in different localities.

Q. About what proportion of your total average purchases comes to you by rail? A. It is hard to guess at that without looking at the figures. I think ten per cent.—ten to fifteen per cent. comes by rail.

Q. Not more than fifteen per cent. probably? A. I should say not, as an estimate.

Q. Does the coal that comes to you by rail cost you more than the coal that comes to you by water? A. Yes, sir.

Q. How much more? A. Fifty to sixty cents a ton more by rail than by tidewater. For that reason we do not establish any rail plants within reach of tidewater. Then you have to go where the difference in carting would offset that cost. Then in all rail there is less loss and degradation, because the coal has not been handled a half a dozen times and dug out from barges, the way it is in water plants. So we figure there is fifteen or twenty-five cents advantage by all rail plant. The plant is usually in a cheaper locality, the ground costs less, the plant is not as expensive, and the difference in time. If we take it two

or three miles away from the water it will more than offset the difference in the cost handled by water.

Q. So although you nominally pay more for your coal that comes by rail it is cheaper? A. It is, if you put your plant in the right location. It would not be with two plants side by side. If you put it away from the water three or four miles, it would be, because you have got the teaming from the tidewater.

Q. If they were side by side the water rate would be cheaper? A. Yes, sir.

Q. Aside from your own company, do you know whether a considerable proportion of the anthracite coal supply used in Boston comes by rail? A. No; a very small proportion.

Q. The great bulk of the supply comes by water? A. Yes, sir.

Q. The Reading Company's coal that comes to you by water comes by water from Port Richmond, does it? A. Yes, sir.

Q. Or from New York Harbor? A. From Port Richmond, near Philadelphia.

Q. The Wilkes-Barre coal that comes to you by water comes from what port? A. New York.

Q. How does the Navigation Company's coal come? A. From New York Harbor.

Q. Is there any difference in the prices of the coals so delivered to you by those two companies in the same sizes? A. They are usually the same. Once in a while there is a slight difference. There has been a slight difference in the past.

Q. Does any coal come to you by barges from Port Reading in New York Harbor? A. No. There would be no object in doing that at all. We have shipped coal there in times when the Delaware River has been frozen over, when the barges could not go up and down, but practically none at all.

Q. It would be more expensive that way? A. No, sir; it would cost the same to us, but it is easier to take it right down the Delaware River. In fact, there is more

money in shipping coal from Philadelphia at seventy-five cents a ton than there is from New York at fifty cents. I suppose it would be a greater advantage to the Reading Company to send it through Philadelphia.

By MR. REYNOLDS:

Q. That difference in price that you spoke of in your answer to Mr. Kingsbury obtained between the Lehigh Coal and Navigation Company on the one hand and the Lehigh and Wilkes-Barre and the Philadelphia and Reading Coal Company on the other? A. Yes, sir. I do not think there has ever been any difference between the Reading and Wilkes-Barre or any of the other large companies. Except there have been times when there has been a little difference in the Lehigh Coal and Navigation.

By MR. COUDERT:

Q. Those times have been infrequent and the difference has been trifling, have they not? A. No, sir; I do not say trifling. Your idea of ten or twenty-five cents may be less than mine. I would call it considerable.

Q. How often have these variations occurred? A. There have been more or less variations. I do not know how often. Quite often.

Q. In any particular grade or kind of coal? A. The Coal and Navigation, as far as the trade we have with them, has but one kind of coal. That is the Lehigh coal.

Q. That is standard and uniform? A. That is standard coal. We try to have it uniform.

FREDERIC PARKER, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. Your address is Boston? A. My legal residence is Bedford, Massachusetts, but my address is Boston. My business is in Boston.

Q. Your business is the coal business, is it not? A. Yes, sir.

Q. Just what branch of the coal business are you engaged in? A. Wholesale.

Q. How long have you been so engaged? A. A little over thirty years.

Q. Territorially about what part of the country do you cover by the trade? A. From Bar Harbor to New London.

Q. To any extent inland? A. To no great extent. We do very little all rail.

Q. As far as the business in the coast towns of New England is concerned, you are familiar with it from Bar Harbor to New London? A. The wholesale end of it; yes, sir.

Q. In your time has there been a growth or a lessening in the use and consumption of anthracite coal in that territory? A. It is impossible for me to say, because we do not do the whole business in any one port, and I cannot say how much my competitors are doing.

Q. Has there been a substitution in your experience of other fuels in that territory for anthracite? A. Yes, sir.

Q. What are those substitutes generally? A. A good many of our mills burned anthracite coal thirty years ago, and they are now burning bituminous exclusively.

Q. Is it true very generally that for steam raising purposes the use of anthracite has gone out in your territory and bituminous has supplanted it? A. Yes, sir; distinctly.

Q. Do you buy coal from various large producing companies? A. Yes, sir.

Q. From your experience can you say whether there is a competition among those companies for the sale of coal to you? A. There is a competition in effort to sell us.

Q. Is there a competition between the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company? A. Not so far as the price is concerned.

Q. Is there as to the soliciting of your business and service offered? A. There certainly is.

Q. Is that business solicited from you by both companies and their respective officers? A. Yes, sir.

Q. What has been the effect as to the present arrange-

ment of stable, dependable prices from year to year on the coal business as you have conducted it; one of restraint or encouragement of the business? A. It is certainly one of encouragement.

Q. How does it work in that way? A. It spreads the business evenly through the year. It would be impossible from our standpoint as wholesalers to supply our trade if they only took the coal as their customers wanted to buy it and take it.

Q. In distributing your coal as a wholesaler throughout the New England territory, where do you order it from? A. In the case of the Reading from Philadelphia, and in the case of the Lehigh and Wilkes-Barre from the office next door here in New York.

Q. And from other companies? A. We do nothing with any of the other companies, except the D., L. & W., and they have had no coal come east for a year and a half or two years.

Q. You distribute the Reading coal from Philadelphia? A. Philadelphia and New York.

Q. You distribute Lehigh and Wilkes-Barre coal from New York? A. From Port Johnson.

Q. Those two ports, are they the chief ports of distribution of anthracite coal? A. Yes, sir. For tidewater distribution.

Q. The coal coming to those ports can be, with facility, distributed to any point up and down the easterly coast line of the United States? A. Yes, sir.

Q. What has been your experience and observation as to the relation between demand and supply of anthracite coal in your territory in recent years? A. We always have difficulty in getting coal in the Fall, and also in April when the price is at its lowest.

Q. So that during a good deal of the time, is it true that the demand exceeds the supply? A. The demand for certain sizes.

Q. What sizes are those? A. Stove coal.

Q. Domestic sizes? A. Yes, sir; domestic sizes.

Cross examination.

By Mr. Coudert:

Q. Did I understand you correctly that of late years you purchased practically all of your coal from the Philadelphia and Reading Coal and Iron Company and from the Lehigh and Wilkes-Barre Coal Company? A. Yes, sir.

Q. And the prices as you said are uniform as between them? A. Yes, sir. They have been uniform of late years.

Q. What determines in your mind the question whether you shall purchase from the one rather than the other? A. Whatever our customers want.

Q. Is that a difference in the coal itself? A. Difference in the coal, difference in the facilities. The Lehigh and Wilkes-Barre will not send their barges east of Portland. The Reading will send theirs as far as Bar Harbor.

Q. Take those factors singly. What is the main factor in determining whether your customers, and therefore whether you, buy Lehigh and Wilkes-Barre coal or Reading coal? A. As I said, the Lehigh and Wilkes-Barre will not send their barges east of Portland. At least, I have never known them to do so. Whereas, the Reading will. It has a lower rate of freight than you could possibly charter outside transportation.

Q. So that all coal you desire to deliver east of Portland you purchase from the Reading? A. Yes, sir. With a tremendous advantage in price to the dealer by reason of the Reading's low freight.

Q. And because you could not get it delivered by the Wilkes-Barre? A. I could not.

Q. So that practically from east of Portland you have no option but to purchase from the Reading? A. No; the Lehigh Valley go down there, and the Lehigh Coal and Navigation Company compete with them there.

Q. Do you purchase from that company coal for east of Portland? A. No.

Q. Why is that? A. We are perfectly satisfied with our present source of supply.

Q. Do you get all the coal you want from the Reading? A. In ordinary times.

Q. Could the Lehigh Valley and the Lehigh Coal and Navigation Company deliver it to you as satisfactorily as the Reading? A. I am very sure they could not.

Q. What is the difference in the facilities of delivery that the Reading have for all that coal east of Portland as compared with the other two companies from whom you could obtain it? A. They have so many more barges, so many more tugs, and their tugs are more powerful, and they handle their floating equipment much better. And their coal is particularly adapted to that market.

Q. Is the Reading Company coal preferred over the coal of these other companies for any reason? You say it is particularly adapted to the market. In what respect? A. It is considered as good as the other companies' coal, and they are surer of getting it when they buy it. When you buy Reading coal you get it. And the other companies do their best.

Q. So it is as much a question of delivery as quality of coal? A. Yes, sir; I should say so. Both things. The coal is good.

Q. Their locality of delivery is such as to determine you to purchase of them rather than the coals of other companies; is that it? A. That is it?

Q. You purchase both Reading coal and Lehigh and Wilkes-Barre coal where the delivery is not to be beyond Portland; is that it? A. Yes, sir.

Q. For the purpose of the supply of what territory do you purchase both the Reading coal and the Lehigh and Wilkes-Barre coal? A. There it is a question of preference in coal—preference in quality—and the time you can deliver it.

Q. As far as delivery, other than the delivery east of Portland you have spoken of—as far as delivery in your other territory is concerned, what is the determining motive that moves you to choose between the coals of the two companies? A. Our customers.

Q. What is the determining motive of the customer?

A. Some prefer Wilkes-Barre coal and some prefer Reading.

Q. What is the difference in the coals which cause those preferences? A. It is hard to say. The Wilkes-Barre coal I think is prepared a little better, as a general rule, and is not so apt to clinker, and it is a little better size. Personally, for my own household use, I should buy Wilkes-Barre coal.

Q. Is that the general opinion? A. In certain territories. But we have so little of it that it does not amount to anything in times of stress.

Q. That is to say, in times when you need a good deal of coal, do you take all you can get from both companies, the Reading and Lehigh; is that it? A. Yes, sir.

Q. Do you often have times of stress when you are not able to fill the demand of your territory? A. No, sir; not in our business.

Q. Then you differ from the Boston and other territories where they have those? A. Mr. Hamlin is a retailer. I know nothing about that.

Q. You are always able to furnish the retailer with all the coal he desires? A. Oh, no.

Q. Then sometimes you cannot get all the coal you want? A. Sometimes we cannot. Sometimes in times of stress.

Q. How often does that happen? A. A year ago last Fall was the last time I remember.

Q. At that time you were in stress for how long? A. From the early Fall until the first of February.

Q. Were you endeavoring during that time to get coal both from the Reading and the Lehigh and Wilkes-Barre? A. Yes, sir.

Q. From any other companies? A. No, sir.

Q. Why did you not try some of the other companies during that time? A. Because we were not entitled to it. We should not have considered ourselves entitled to it. We had never given them business in dull times.

Q. Then you mean that you felt bound always to deal with the Reading and the Lehigh and Wilkes-Barre Companies? A. No, sir.

Q. What do you mean by saying you were not entitled to obtain any coal from the other companies than the Lehigh and Wilkes-Barre and the Reading? A. Because we had given our business to them for a period of years during dull times, but that is no guarantee we should always continue to do so. That is for us to decide.

Q. But you have, as a matter of fact, always given to the Lehigh and Wilkes-Barre and the Reading? A. Not always. In my early days I was agent for the D., L. & W.

Q. For how long a time, generally speaking, have you given your business exclusively to those two companies? A. Practically exclusively for ten or fifteen or sixteen or seventeen years, perhaps.

Q. How do you obtain your knowledge of prices? A. The Reading sends us a circular the first of every month where there is a change in price. I do not remember ever seeing a Wilkes-Barre circular.

Q. How do you get the information from them? You assume it is the same? A. Assume it is the same.

Q. What is your reason for having during the last fifteen years purchased your coal exclusively from these two companies? A. It seems better business for us. It was the coal our customers liked. They lived up to their engagements. It is like trading with any reputable house in any reputable business.

Q. Were your relations with them of so amicable a character that you were more sure of prompt service and good service than you would have been from the other coal companies? A. Yes, sir.

Q. That was your reason? A. That was our reason. It has been for a number of years. No sensible man in business would change horses.

By Mr. Reynolds:

Q. During those ten or fifteen years one of the chief assets of those two coal companies, in so far as their relations to you were concerned, was because they were always honest and reliable and reputable in their dealings with you? A. Yes, sir. Exactly.

Q. Did they ever gouge you in the price during that time? A. Never.

Q. Did they ever use any persuasive measures of any sort? A. Never.

Q. Or, with any one else so far as you ever heard of? A. No.

LOUIS ZEPFLER, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your address? A. My legal address is Needham, Massachusetts. My business address is Boston, Massachusetts.

Q. What is your business? A. Wholesaler of coal.

Q. How much of a territory about Boston does your business extend over? A. We do business in practically all of the New England States.

Q. Do you buy from the large producers of coal? A. Yes, sir.

Q. All of them? A. We buy of the Reading and Wilkes-Barre and the Navigation and the D., L. & W., and the Susquehanna and the Lehigh Valley.

Q. And the Ontario and Western? A. No; we do not do any business with them, or with the Erie, either.

Q. From your standpoint as a buyer trading with those companies, do you find that the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company compete for your business? A. Very much so.

Q. Do you find that that competition extends to any difference in prices? A. Not so largely in price; no.

Q. What does it consist in? A. In service—quality and service.

Q. Does each company solicit your trade? A. Yes, sir.

Q. With energy and interest? A. Persistence; yes, sir.

Q. Do you find any competition between the Lehigh Coal and Navigation Company on the one hand, and the Philadelphia and Reading Coal and Iron Company and

the Lehigh and Wilkes-Barre Coal Company on the other? A. Yes, sir; I do.

Q. Does that competition sometimes in dull times extend to a competitive price? A. Yes, sir; it does.

Q. Do you deal with any of the independent producers of coal? A. No; I do not.

Q. What has been the effect upon your business of the regular stable price of coal from year to year and the regular lessening of the price in April with added increases from then until the Fall? A. It has been very beneficial in a business way, both to the consumer, and the dealer and ourselves. It has distributed the coal more uniformly and enabled us to handle our business better all 'round. If we did not have those changes in price, the consumer would only buy coal when he needed it, and the result would be you could not take care of them. We would not have time to make deliveries.

Q. Do I understand you mean that he would postpone his purchases until he got so cold he would have to have coal? A. Yes, sir. We would not have time enough to get the coal around to him.

Q. That is human nature? A. Sure. That is the trouble with all of us, we put things off until we want them.

Q. In your experience in the trade in New England, has there been a gradual substitution of other fuel for anthracite? A. In my particular line I cannot answer that as Mr. Hamlin could, because I am trying to increase my business all the time, and have the whole of New England territory to do it in, and I may get business away from the other fellow or he may get business away from me. I could not tell.

By Mr. Coudert:

Q. Your business has not decreased? A. No; my business has not decreased, because I am buying bituminous as well as anthracite.

By Mr. Reynolds:

Q. Do you find some of your customers in New England outside of Boston and elsewhere substituting bitu-

minous for anthracite? A. Largely; yes, sir. Among the industrial uses that are going on to any extent, they are altogether on bituminous coal.

Cross examination.

By Mr. Coudert:

Q. Has your anthracite business fallen off? A. I think not, speaking offhand.

Q. Has it increased? A. I should say not. I think we are holding our own.

Q. For how long a time have you been holding your own? A. I should think for the past five years.

Q. How is the solicitation for coal trade carried on by the various companies? Do the agents come to see you or send you price circulars? A. Yes, sir. The companies that we buy of that I named before all have representatives in Boston, they have Boston offices, all independent, and we have frequent visitations from those agents.

Q. From what coal company do you purchase the larger portion of your coal? A. I should say the larger portion of our coal was purchased of the Lehigh and Wilkes-Barre Coal Company. I think so.

Q. What is the reason for that? A. The reason for that is that my trade calls it a superior coal, more suited to their uses, and, of course, my business is to sell what my customers want, and if the customer likes that coal I am going to get it for him.

Q. What does your customer use the coal for? A. Domestic. I sell the retailer for domestic use.

Q. How does the amount of Lehigh and Wilkes-Barre coal which you sell to your customers compare with the amount of Reading coal which you sell them? A. I could not give you the exact percentage on that.

Q. Very roughly speaking? A. I should think perhaps that I might sell two to one.

Q. You sell twice as much Wilkes-Barre as Reading? A. I think so, of Wilkes-Barre to Reading.

Q. Do you find the Reading coal an inferior article? A. Not particularly so, but with my trade it is not as satisfactory as the other coal.

Q. How is the Delaware and Lackawanna coal? Is that an inferior coal? A. No; that is a very satisfactory coal. I would buy that if I could get it, but they have given up the eastern market in the past two years.

Q. How is the coal delivered to you by these various companies? A. A portion of it by tidewater and a portion of it all rail deliveries.

Q. In what proportion as between the tidewater deliveries and the rail? A. I should think it would be an even thing.

Q. You get about half of it one way and half the other? A. I should think so.

Q. And the tide water is delivered to you where in Boston? A. To whatever point is designated. Wherever I sell my coal, whatever point it might happen to be, either shipped by barge or schooner

Q. Which company does the best, if there be any difference in them? A. I should say the Reading Company was the best in service with their barges.

Q. They have those large barges of which Mr. Hamlin spoke? A. Yes, sir. And they have so many of them.

Q. So far as the barge service is concerned, you prefer them? A. Yes, sir; so far as the barge service is concerned.

Q. How does the Lehigh and Wilkes-Barre deliver? By barge also? A. Yes, sir.

Q. What is the dissatisfaction, if any, with their barges? A. They have not so many. That is to say, they have I think altogether fifteen barges for eastern business, whereas the Reading Company has I think sixty-five or seventy.

Q. So it is a question of the number of barges? A. The number and the good service often times.

Q. The barges are all about the same size? A. Yes, sir; they run about the same in size. There is a little variation.

Q. You said you did not purchase from the Ontario and Western or the Erie any coal? A. No, sir; I have not.

Q. Is there any particular reason for that? A. No; I should say not. Excepting that the coal is not adapted to what my customers need.

Q. How much coal do you purchase from the Lehigh Coal and Navigation Company? A. That would be a pretty difficult thing to say.

Q. Roughly, ten per cent. or five per cent.? A. I might buy between five and ten per cent.

Q. A very small proportion? A. Yes, sir.

Q. How is that Lehigh coal delivered to you? A. By barges and by rail.

Q. By barges in the same way? A. Yes, sir.

Q. Have you any reason for preferring their coal to any other coal? A. No. Only where perhaps a Lehigh coal is called for. Their coal is Lehigh coal. That is a different grade.

Q. And it is only for the smaller proportion of your customers that you desire Lehigh coal that you purchase from the Lehigh Coal and Navigation Company? A. Yes, sir.

Q. What difference do you find in their price list from that of any other company selling Lehigh coal? A. At times they gave me an inside.

Q. What does that amount to? A. Roughly ten cents a ton.

Q. At what time? Any fixed times during the year? A. No. It depends largely on trade conditions.

Q. You mean when there is an over-production of coal? A. Perhaps a slower demand.

Q. Have you been at any time affected by coal stringency so you cannot get all the coal you want? A. Yes, sir; I have been.

Q. At such times do you find any differences in the prices? A. Not with the coal companies. Their prices run through uniform.

Q. And those prices are practically uniform throughout the year except in exceptional cases? A. Except the exceptional cases to which I have testified.

Q. And is the coal that is bought in those exceptional cases in comparatively small amounts for particular deliveries? A. I hardly know how to answer that, because oftentimes with the lower price we are able to use more of it, so it might amount to more than otherwise would be the case.

Q. But, generally speaking, it is not a large amount, is it? A. Not particularly large; no.

Re-direct examination.

By Mr. Reynolds:

Q. What do you find as to the prices of the independents in times of scarcity of coal? A. They are very high, excessively so. Speaking of independents I might say that is why I do not buy any coal of them, because they are too unreliable. I have tried it in the past, but have given up in despair, it is too speculative.

Q. Does your trade vary with these different companies from year to year, that is, the proportion that you may take from one or the other? A. Yes, sir; it varies some.

Q. You spoke about not dealing with the independents. As matter of fact, do you deal with the Lehigh Coal and Navigation Company? A. Yes, sir; I deal with them. When you put the question on that I thought you meant the independents that are with us when they want business, and you give them an order, and the prices go up and you cannot get it. I cannot do business that way. The Lehigh Coal and Navigation Company have always given me what I wanted.

Q. Do you regard the Lehigh Coal and Navigation Company in any way dependent on the Reading Coal Company? A. I should say not.

Q. Or the Lehigh and Wilkes-Barre Company? A. By no means, not to my knowledge.

Q. Does your observation indicate that they are entirely independent from the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company? A. I should certainly say so, entirely independent

in selling, and in any other way, in the manner of doing business.

Re-cross examination.

By MR. COUDERT:

Q. What do you call an independent? A. I would call an independent a man who has an operation that he operates himself, or, perhaps you and this gentleman here, buy a mine and open it up and are going to do business. I call you an independent.

Q. Even though it were an incorporated company? A. Even though it were an incorporated company, I would call you an independent operator.

Q. What you mean is that it is independent of any railroad company? A. That is a term used by us coal men.

Q. Explain fully in your own language what you coal men mean by independent? A. What we call independent is a man who has an operation that he operates himself. I should say that he operates on his own account.

Q. And does not operate for a railroad or anybody else? A. That is all. He operates it for himself. We term him in our market an independent operator.

Q. You do not like him? A. I do not like him, because he does not give us a square deal.

Q. How do the independents, with whom you used to deal, deliver the coal? By barges or rail or what? A. Both ways. Except the independents as a rule have no barges of their own, they have to go into the open market and charter them—charter outside transportation.

Q. Are they large dealers or small dealers, the independents? A. They vary in size. Our experience has been such a sad one we have given up entirely trying to do business with them. They are too unreliable.

Q. Unreliable in price or service? A. Unreliable in delivery. As an example, when they want business they will make a price low enough to induce you to give them an order. Now, should it so happen that the market conditions stiffened immediately thereafter you do not get any

coal. They never deliver it to you. They sell it to the highest bidder. That has been my experience.

Q. And it is for that reason you do not deal with them? A. That is my sole reason. You take it along through the last stringency a year and a half ago, I bought all my coal of the companies, they gave us coal at the regular price without any premiums being asked, and, in fact, I clearly understood that if I were to ask anything of the kind on my own account I would have difficulty in buying more coal.

By Mr. Kingsbury:

Q. Do you men in the coal business recognize the so-called large companies as having special relations of some nature with some particular railroad? Are they not also called the railroad companies in general? A. No; we do not consider them so. Not in that line.

Q. You have heard that phrase; the railroad coal companies, in business, have you not? A. I have heard of it and read of it in the papers and so forth, but we never found any connection in that way in our experience.

Q. Do you not know, as a matter of fact, that, for example, the Delaware, Lackawanna and Western Coal Company has a special relation with the Delaware, Lackawanna and Western Railroad Company? A. I do not know that.

Q. Not as a matter of common knowledge in the business? A. No; I do not know that.

(At one o'clock a recess of one hour was taken.)

Michael F. Burns, having been duly sworn, was examined as follows:—

By Mr. Reynolds:

Q. What is your company name? A. Burns Brothers.

Q. What office with that company do you hold? A. President.

Q. What is the business of Burns Brothers? A. Selling coal at retail, and occasionally a cargo, when a man does not know his business.

Q. From whom do you purchase coal? A. Everybody that sells it.

Q. Every producer? A. Yes, sir.

Q. Independents? A. Everybody. Yes, sir.

Q. The Philadelphia and Reading Coal and Iron Company? A. Yes, sir.

Q. The Lehigh and Wilkes-Barre Coal Company? A. Yes, sir.

Q. The Lehigh Coal and Navigation Company? A. Yes, sir.

Q. The Delaware, Lackawanna and Western Railroad? A. Yes, sir. Williams & Peters, Dickson & Eddy, and everybody, almost everybody that sells coal.

Q. Are you a very large distributor of coal? A. Comparatively so, yes, sir.

Q. How long have you been in the coal business? A. About thirty years.

Q. Here in New York? A. Yes, sir.

Q. Has there been any considerable change in the use of other fuels than anthracite coal in New York during that period? A. Not materially. Except that gas has taken the place of domestic sizes, and the smaller sizes have taken the place almost entirely of the large sizes, known as domestic.

Q. The gas has displaced the fuels for domestic cookery? A. Almost entirely.

Q. Is there any extended use of coke in New York for domestic purposes? A. Quite large; yes, sir. As far as they are able to produce it, or coke it.

Q. What has been the effect upon the stability of the coal business of the plan of reducing the price in April and gradually increasing it? A. I do not know what would happen now under the present conditions if it were not for the fact that the distribution of coal goes over the whole year. In other words, the people would not buy the coal were it not for the fact that there is an inducement there. Here in New York, I started in, as an example, on the 1st of April, giving the price of April and May the same, and you would be amazed to know that the people are not even interested in buying coal in April, feeling that they can get it just as well in May. The tendency of everybody is to buy from hand to mouth,

and prolong it as long as possible. We have to keep urging them to take in coal even in April at a deduction of fifty cents, and then they want us to wait until the Fall for the money. There would not be coal enough to go around. We could not possibly do it as it is now at the present time in the months of October and November, when the West seems to need the coal and they seem anxious to get it there, because the time of getting it there is apparently stopped after the 20th of November. We have the greatest difficulty in getting coal and when we want it the price shins up with the individual operator.

By Mr. Coudert:

Q. Do you mean anthracite? A. I am speaking of anthracite.

By Mr. Reynolds:

Q. Your testimony is confined to anthracite? A. Almost entirely; yes, sir. We sell quite a little bit of bituminous, but it is recently, by reason of the fact that anthracite coal of a good quality is practically getting out of sight as far as the smaller sizes are concerned. They are beginning to use bituminous coal and are putting in special boilers for the purpose. The schools are even adopting it now. We put in a little lot a while ago and were penalized a dollar a ton on it, and we were only making fifteen cents.

Q. Does the market hereabouts consume all the anthracite coal it can get? A. For seven or eight months in the year.

Q. During those seven or eight months in the year does the demand exceed the supply, or does the supply exceed the demand? A. Personally I have always been able to get enough coal some way or another. Sometimes we have to climb for it, but it has been the case that a lot of people are pretty well out of coal, and I myself have been down to almost bare boards.

Q. So that the demand is a little ahead of the supply? A. I should say it was; yes, sir.

Q. From your side of the coal business, that is, of a

purchaser from a producer, do you find that there is or is not competition between the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company for your business? A. There is indeed, a great deal of jealousy existing between them. There is no difference in the prices at all, they are both the same, except on buckwheat coal, and they are twenty-five cents less, and on pea ten cents less.

Q. Which is the less? A. The Reading. That I think is largely due to the fact that coals of a kindred nature can be bought from other people, and if they want to sell it at all they have got to meet the price.

Q. That is, the Lehigh and Wilkes-Barre Coal Company is a better coal? A. The Lehigh and Wilkes-Barre is a better grade of coal.

Q. How does the competition between those two companies manifest itself to your observation? A. They are constantly asking us "What is the matter? Are you going out of the coal business? Why don't you give us more business?" And I hate to hurt their feelings, and tell them the truth, so that I do the best I can with them.

Q. They are actively soliciting your trade, both of them? A. Yes, sir; in every way they possibly can decently.

Q. Is there any competition between the Lehigh Coal and Navigation Company on the one hand and the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company on the other hand? A. You could not consistently call it anything else. Oh, yes, quite a feeling there. In fact, I know that is so.

Q. Does the Lehigh Coal and Navigation Company try to get your business? A. They do, indeed; yes, sir.

Q. Do they ever go to the extent of cutting prices to sell? A. That is rather a personal question. It is hardly a fair thing to put up to me because I meet them both and I cannot really afford to antagonize either one of them. That is an honest fact. I cannot get along without every dealer and every producer, and I would not consider it fair to put on record what I am able to do, unless you

insist on it. It would put me in rather an embarrassing position. There is competition of every kind and character. I am free to say that. They do everything they can to get the business.

Q. I would like to know if the Lehigh Coal and Navigation Company at dull times will shade the price somewhat to move the coal? A. I do not know hardly what to say to that. I should rather think that they would have to do it occasionally if they wanted to move it at all.

Q. Do they sell you coal at a little less price? A. I decline to answer that question unless you compel me to. That is not a fair question, honestly, as I think I have told you.

Q. Do they compete in every conceivable way for the business? A. They do; yes, sir. One of the most prolific ways of doing that during the past year or so was the Pennsylvania tax of two and a half per cent. on the mine price, which only a few got.

Q. At what period did the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Company add the tax to the price of the coal? A. To the best of my recollection, it was the first of August last.

Q. Do you remember about what time the Lehigh Coal and Navigation Company added the tax to the price of its coal? A. They had a provision in their contract which was passed by almost everybody who made contracts with them—they looked upon it the same as you would in an insurance policy, as a lot in that nobody reads, and it suddenly developed that they intended to enforce that tax by reason of this contract, but they waived it, so that they did not charge it in this part of the world. I am not speaking of anywhere else.

Q. When did they add the tax actually to the price of the coal? A. They put it on in the shape of five cents a ton in the smaller sizes and ten cents on the large sizes on the first of April of this present year.

Q. That is roughly, nine months after the other com-

panies did? A. Yes, sir. That was universal. It was not confined to them alone. I mean every other company.

Q. Have you ever paid a premium on coal to the Lehigh and Wilkes-Barre or the Philadelphia and Reading Coal and Iron Company? A. No, sir.

Q. Have you paid a premium to other producers at times when coal was scarce? A. When there is a scarcity of coal I buy it from anybody that happens to have it, and have had to pay a premium to get it. Mostly people around town here—I do not know where they get the coal—. Recently the individual operators, because there are more of them now, they get all they can for their coal, as wise merchants naturally. The companies would, if they were not afraid to, I guess.

Q. Have you any general understanding derived from your contract with the larger companies that it is against their policy to charge the public more than the regular price? A. They never have done it, not within my experience. Their prices are made and established, and with the exception of putting that tax on last year on the part of the Philadelphia and Reading and Lehigh and Wilkes-Barre, there has never been a time when any one of them charged an excess price over the circular which they issued within my knowledge.

Cross examination.

By Mr. Coudert:

Q. You used some expression about being penalized on account of some bituminous coal. I did not understand what you meant. A. The city of New York buys coal under the British thermal unit basis, and also an ash content, and they say that it must contain only a certain amount of ash, and it must register, by chemical test, a certain number of British thermal units, and they take the sample arbitrarily themselves and send it to their own chemical shop, and then tell you what you will be penalized, and, of course, the remedy you have is not to sell them. This time we did.

Q. They penalized you how? A. If the ash is a certain number of units above what they consider, they charge you so much per cent. additional. It is all specified in the contract. They have a perfect right to do it, provided it is correct.

By Mr. Reynolds:

Q. That is deducted from the price? A. They deduct from the price.

By Mr. Coudert:

Q. That was in connection with bituminous coal? A. That was bituminous coal; yes, sir. It should have been fourteen and five-tenths British thermal units, and, according to their estimate, it was only thirteen six or seven.

Q. Did you sell them anthracite? A. Yes, sir.

Q. You have the same system for that? A. The same system exactly. Only that we pay more attention to it, and when they take a sample we take one, too.

Q. You do not have any difficulty with them in regard to that? A. We have a little once in a while, but nothing like that. That was exceptional.

Q. Has your anthracite business fallen off materially in late years? A. No, sir. It has gone up; it has increased. The demand for anthracite is increasing. The smoke ordinance is a Godsend. They investigate it if you put it in for heating, and no matter whether there is smoke coming out of it or not, they condemn it. We are doing everything we can to induce a greater use of bituminous coal, because there is no other outlook for the consuming public especially for steam coal.

Q. I understood you to say, though I may be quite wrong, that substitutes were being found for anthracite, and it was gradually going out. A. That is absolutely true.

Q. As far as your business is concerned, it has not gone out yet? A. No, sir. Except we feel it very keenly. In the Summer time we do not have anything to do at all. During the months of April, May and June we are fairly busy; April particularly so. In May, moderately so, and in June we just flip along, and in July, August and September, especially July, August and September, there is

nothing doing, absolutely we lose money so fast that it scares me.

Q. Because they do not buy? A. Because people do not buy any coal at all during the Summer. There is no coal being consumed during the Summer.

Q. Has anthracite any advantages for burning over bituminous coal? A. Only its cleanliness.

Q. Is that the reason why it commands a higher price than bituminous coal? A. It does not for the coals that they use in competition with it.

Q. How do the prices compare? A. They are about the same thing. For instance, we are selling buckwheat coal to-day at $3.65 for two thousand pounds, which we pay $2.95 for, in round figures. Bituminous coal we are selling at $3.85, two thousand pounds in weight.

Q. Is that because the buckwheat enters into competition with the bituminous? A. I think that is the only reason that buckwheat has kept as cheap as it is, because it costs just as much to produce it as it does the other sizes.

Q. If it were not for that competition with the bituminous it would be higher, would it not? A. I do not know about that. I could not tell you. It has always been my opinion ——

Q. What has been the history? A. Since I have been around, it has always been in competition. Of course, buckwheat has come into use only in about fifteen years.

Q. Have any other grades of anthracite during the time of your experience been in competition with the bituminous? A. No, sir.

Q. What other grades are in competition? A. All the other grades are used purely for heating purposes, domestic, low pressure plants. There is nobody to-day with a grain of common sense that uses any of the larger sizes for making steam or generating steam for power.

Q. Generally what are those larger sizes used for? A. Domestic purposes, heating houses, and used in ranges, and in Winter time where people have got to have a little heat they use coal in their ranges. When they can get along without heat and only use it for cooking, they use gas.

Q. Has there been a falling off in the use of anthracite coal in the market in New York in your experience? A. In New York City proper, Manhattan, there has decidedly.

Q. How about generally speaking? A. In Brooklyn and the outlying sections I rather imagine it has increased, if any thing.

Q. Your business has steadily increased? A. Our business has steadily grown, yes. But, it has been at the expense largely, I am sorry to say, of other dealers. When I first started in business here in New York there were two hundred and fifty coal dealers. To-day there are not over forty, and there is not enough for them.

Q. How do you explain that? A. I really could not do it unless it is good luck. I never could ascribe it to any other reason, why I should get so much more than any other fellow, except we have the entire confidence of the public. I give them a ton of coal—that does not speak for much—that is the only reason I can ascribe it to. When we have a period such as this last two or three months, when the difficulties of delivering coal were enormous, when it took a man with at least good physique to stand up under it, as well as good financial standing, because we had to spend money like as if it had no value, and believe me I think a lot of it too, because I have had to work hard for it—that makes it so that the people say, "We want to tie up to a man who apparently is working night and day and has no respect for Sunday." Because we did not stop for one single hour.

Q. You say when you began there were over two hundred and fifty competitors? A. Yes, sir.

Q. Now only about forty? A. Yes, sir.

Q. How during that time, and speaking generally, have your prices of coal been compared with your competitors? A. When we first started they were very much higher than they are now.

Q. The coal prices? A. Yes, sir. Then came a condition in the coal trade in which nearly all the companies busted, including the Jersey Central, it then went into the hands of a Receiver, the D., L. & W. stock, which to-

day is a wonderful investment, was going around begging, the Philadelphia and Reading you know all about that of course—the peculiar condition to-day in regard to the Philadelphia and Reading is, their kind of coal is very expensive, they mine about twenty per cent. of the whole output, and they have to get a decent price for the coal or they would have to go out of the business—I was taking lunch with Mr. Baer one day a year or two ago, and he showed me his balance sheet, in which I think his profits were seven cents a ton. I think it would be interesting if you would go up there and see what that coal goes through, the same as I did, and you would come back convinced that it is the most remarkable thing that coal is sold so cheaply as it is when you consider what it has to go through.

Q. How do your prices compare with those of other retailers in the market? A. They are generally a little bit higher. I think we get more money for coal than almost any other dealer in Manhattan.

Q. What is the difference? Suppose Mr. X desires to buy a ton of various grades of anthracite coal from any reputable dealer throughout the city, how much variation in price would he find? A. As much as twenty-five cents a ton perhaps. We figure in cents, not per cent. You have to do a very large volume of business to make any money. The reason for this reduction in the number of coal dealers—in the olden times every coal yard was practically in the middle of the city near its customers. Jeremiah Skidmore had a place at Thirteenth and Fourth Avenue. The property to-day is worth a million or was before the depression. They went and located on the east side, Thirty-fifth and Thirty-fourth Streets. That blew away the dealer. They would have a coal yard in the interior of the city, and as soon as value increased there they could not continue to pay the rent that was required, and the result was they had to get out, and they did not think well enough of the business to go in it anywhere else. There was a time when there were coal yards on Fifth Avenue.

Q. Where are your coal yards? A. They are located all over the city, on the water front, and we have one at

Delancey. We get yards where we can reach every customer about a mile away.

Q. Do you own them or lease them? A. We lease them almost entirely.

Q. Have you leased any from the coal companies? A. We leased the Communipaw from the coal company.

Q. Whom do you lease that from? A. From the New Jersey Central Railroad, and pay them thirty thousand dollars a year rent.

Q. You have a contract with them? A. We have a contract with them; yes, sir. $7500 a quarter in advance.

Q. Is that lease still subsisting; do you still have a lease with them? A. Yes, sir. They have violated the principal part of it though.

Q. Have you lived up to your obligations of the lease? A. Tried my best; yes, sir.

Q. Are you obligated under that lease to purchase any part of your coal from them? A. Yes, sir.

Q. What is that? A. A quarter of a million tons I think it is. As matter of fact, we buy more than that from them. We have to.

Q. Half a million, is it not? A. About a half million; yes, sir.

Q. Do you have any other leases with any other railroads? A. We lease a place at Thirty-eighth Street from the Pennsylvania Railroad.

Q. You have a similar contract with them? A. No; we have a lease only. We have no contract. We pay them $6000 a year and taxes. The total is about $10,000 a year. During the past year their subsidiary, the Susquehanna Coal Company gave me no coal and had it not been for the gentleman at the end of the table (Mr. Robert C. Hill) we would have been out of business there. He gave us some coal. I refer to Mr. Robert C. Hill of the Madeira-Hill Company. They gave us quite a bit of coal.

Q. You have no contractual relations with the Pennsylvania to purchase any coal from them? A. No, sir; we have no agreement with them to purchase any coal. Only a lease.

Q. Do you lease from any other coal road? A. That is all. Except over in Brooklyn we have a yard we lease from the D., L. & W.

Q. Have you any arrangement with them as to the purchase of coal? A. No arrangement. I cannot get coal from them half the time.

Q. During a great part of the year you find it difficult to get enough coal? A. Yes, sir; I do. Yes, a great part of the year. Not the greater part.

Q. At that time do you purchase from the companies indiscriminately wherever you can get it? A. Purchase wherever I can all the time, yes, sir.

Q. In making those purchases what is the determining factor which in your mind leads you to purchase from one rather than another? A. As far as I am able to, I buy the best coal first, and when I cannot get any more, I take what is coming. I give the preference to the better grade of coal, and sometimes the price, of course.

Q. The price is usually pretty uniform? A. Generally; yes, sir.

Q. Does the delivery have anything to do with it, where the coal is delivered to you, or anything of that kind? A. No.

Q. Always delivered at your yard? A. No, sir; it is delivered on our boats. We pay the freight, insurance and everything else ourselves.

Q. Where are those boats? At your piers, are they not? A. Yes, sir. They are floating in the river wherever they happen to be. We have quite a fleet of our own, and in addition we hire quite a lot of boats.

Q. Do any of the coal companies give you any special allowance? A. No, sir. I am sorry to say they do not. We used to get an allowance, but I was blocked with others, and it was stopped on me.

Q. When did they cruelly cut you off from that justly merited allowance? A. About a year ago. They just stopped it and said, "Nothing doing."

Q. Who advised you? A. I wouldn't like to say. They did not advise me.

Q. They notified you they would stop? A. They did not pay. Do you want what I said in response to their advice?

Q. Did they allege any reason for apparently an arbitrary act? A. Yes, sir; they did. It was not a viola ion of the Interstate Commerce Commission apparently, because it was put in the tariff, and the reason for giving it to us was that we were unable to do the business here in New York with the keen competion that was going on without it, and the result of it has been, when we could not get it from the railroad company we put it on to the public, naturally. The public get it anyhow, coming and going.

Q. The public are paying this Pennsylvania tax which you spoke of, are they not? A. They certainly are; yes, sir.

Q. That tax is how much; ten cents a ton? A. Ten cents a ton.

Q. How much was added to the price of coal? A. Fifteen cents.

Q. By the railroad company? A. Five cents by the railroad company on the smaller sizes. In the case of the Reading and the Lehigh and the Wilkes-Barre, it is an absolute tax two and a half cents. In the cases outside of them, universally the price has been advanced ten cents on one size of coal, five cents on the others. On pea five cents, and on buck, and five cents on all the junior sizes. On domestic sizes ten cents.

Q. In order to cover that tax? A. I do not know what their reasons were. They do not say so, because they are afraid we might ask them to pay us back if it was declared unconstitutional.

Q. It was shortly after the imposition of the tax? A. It was nine months after. It was on the 1st of December last when the others put it into effect outside of the one or two.

Q. In consequence you had to pay that much more for your coal? A. Yes, sir.

Q. How much did you ask from the public in consequence of that? A. Fifteen cents a ton.

Q. You added fifteen cents a ton to cover the ten cents

that they put on? A. Yes, sir. Five cents that they put on, and ten cents we put on, fifteen cents. If they had not put on anything at all, we would have found it necessary to have increased our prices. For instance, laws are constantly being put in force which make it impossible for a man to get along. Three or four years ago we were paying eight thousand dollars a year premiums on the casualty insurance. The best offer I have had from any concern that would be worth considering was $32,800, and with the proviso that until they knew how this workmen's compensation law was going to act, that they would not guarantee that there would not be a further advance. We finally succeeded in getting one man who has taken the contract for $25,000, a lump sum. On the 1st of January last, a delegation of working men came into our office and announced, and notified us that they did not intend to put the rates up this year. We are paying them $18 as a maximum for a truck driver, 30 cents an hour.

Q. What do you mean by $18? A. $18 a week maximum. That is the rate for a three-horse truck driver. It is $17 for a two-horse truck driver and so on, and instead of working eleven hours they are practically only working nine. They used to come in the stable at half-past six and their time began at seven o'clock when they came on the scale, and if they got back into the place by half-past six that was considered a day's work. If they worked a few minutes after half-past six, we allowed them an hour overtime. Now they come into the barn at six-thirty and their time begins then, and they must be back in the barn at five-thirty and out again, or else we have to pay them extra hours. We calculate that it is taking twelve hours now to do a day's work.

Q. Have coal prices at which you buy it always been practically uniform since you have been in the coal business? A. Always more or less uniform, because the minute anybody makes a lower price everybody has to follow suit. Particularly at the present time, there is not the slightest incentive, because it is a good deal of considera-

tion for them to give us the coal at that price, when they could, if they were really merchants, get a good deal more money for the coal.

Q. How could they get a good deal more money for it? A. All they would have to do would be to ask for it.

Q. You mean there is such a demand? A. People must have the coal. For instance, we have paid as high as $10.50 for coal during the strike of 1912, and I was getting it from the coal companies at five dollars. I was not buying from Mr. Baer, fortunately, at that time, because he said that anybody that would sell coal over the regular price, which I think was $6.50 he instructed his people to not give them any coal.

Q. Is there any particular scarcity of coal now at the present time? A. Yes, sir. Particularly at this minute.

Q. And it is difficult to get it? A. Difficult to get it; yes, sir. There is a delay on stove and egg to-day. Not a pronounced delay. None that is going to cause an advance in price. They are all beginning to harden up.

Q. What do you do? You give orders all over? A. Yes, sir. The way the coal business is done, when we want coal, we call them up and say we would like a cargo of coal, and they put it in for us.

Q. Are you an incorporated company? A. Yes, sir.

Q. Have you ever paid any dividends? A. We paid two and a half per cent. last year.

Q. Before that? A. Before that we paid them whenever we had them. This is a new corporation a year and a half old.

Q. What rate of dividend was paid before that? A. I think they averaged about ten per cent.

Q. You used one phrase that I am not sure I understood, in your direct examination, you said something about small sizes going out of sight. Did you mean the prices going up? A. I meant for several years back the consumption of coal on the part of user has been largely the small sizes, No. 2 buckwheat and No. 3, and people were dependent very largely on the washeries as a

help out. That is, I mean that the companies in years gone by had deposited in culm banks a lot of those small sizes which were not salable at that time, and then on account of the demand, and the companies trying to make something out of them they put up washeries, that is, they washed and took out all the coal of those salable sizes. That would come here and help out. Those things are gradually being used up, so that we are in a measure largely dependent, especially in the Wyoming region, where the better grades of coal come from, on freshly mined coal.

Q. You say that the large coal companies could get a good deal more for their coal if they had a mind to charge it? A. You are right, yes. They would have the least trouble of anything you ever saw in your life at certain seasons of the year.

Q. You said they were not merchants? A. I say a man ought to try to get all he can for the goods he has to sell.

Q. You do, do you not? A. I declare to you I do.

Q. Why do not they? A. I give it up. Because they are afraid of you, I guess. I believe that is true. That is before you appeared on the scene.

Q. You are speaking of the Government? A. Yes, sir. That is entirely impersonal.

Q. Can you tell me in a general way about how much coal you sell in an average year in tons? A. We sell from two and three-quarter millions to three millions in a year.

Q. Can you tell now in a very general way how that purchase is distributed? I mean by that, what proportion, very roughly speaking, you purchase from the Reading? A. I should think we purchase about 200,000 tons a year from the Reading.

Q. From the Wilkes-Barre? A. I should think about three-quarters of a million tons.

Q. From the Lehigh Coal and Navigation Company? A. About 150,000 tons.

Q. Who is your largest vendor of coal; what company;

the Delaware, Lackawanna and Western? A. No; I would have got a good deal more from them if I could get it. It is very excellent coal. I should say that I bought most coal from the Lehigh and Wilkes-Barre in proportion.

Q. What is your reason for that? A. It is an exceedingly good grade of coal, the best there is in the market, and I buy it wherever I can, and so does everybody else in New York.

Q. It is better than the Delaware, Lackawanna and Western? A. Yes, sir; it is a more serviceable coal, a harder coal.

Q. That is in your judgment? A. That is beyond question. I do not have to have anybody's judgment on that. You can see that as you run.

Q. Do they have as many kinds and grades as the Reading? A. They have the same thing, excepting the Reading has red ash coal.

Q. Does the Reading have any kinds of coal that the Lehigh and Wilkes-Barre do not have? A. Yes, sir. They have the red ash and the Lykens Valley.

Q. Tell me about that. A. They have the Lykens and the red ash. That is all the coals they have that differ materially from those produced by the Lehigh and Wilkes-Barre as a general proposition.

Q. Have those coals any particular advantage, the two you mentioned? A. There was a time when they did, but later I think they are rather a detriment to a company than an advantage.

Q. What are they, harder or softer? A. They are softer. They are a poor man's coal. A working man's wife can put in a fire a very small quantity and get along nicely, but nowadays there are not many of those kind of people. They generally live in a flat that is heated, or else they buy their coal from the peddler.

Q. What about the Lykens? A. The Lykens Valley is a very deep red ash. It is very friable. It is a very friable coal. I should say twenty-five per cent. of it went to dirt immediately.

Q. How are the coal circular prices given to you? Are they sent to you or brought to you by agents? A. On the first of April, usually, we receive a notice from the companies, saying that there will be a reduction of fifty cents over prevailing prices in the month of March for the month of April, for the month of May forty cents, and so on until the price is restored on the first of September.

Q. They do that regularly, so you always know it is coming? A. Yes, sir.

Q. You can govern your business accordingly? A. Yes, sir; we make our agreements on that basis. We contract to sell an apartment house to-day with coal $6.25, with an advance each month of ten cents down until September.

Q. How does that price of $6.25 to-day compare with prices when you first went into business some twenty years ago? A. The price when I went into business was about $7 a ton. It went down until we were selling at $5 I think, or $4.75.

Q. What date was that? A. I do not recollect. I think it must have been somewhere in the eighties, that the companies went all to pieces, every blasted one of them became embarrassed for money.

Q. And the coal went down how low then? A. The coal went down I think at that time to $4.75 or $5. I am not very clear on that.

Q. Has it been going up ever since until it reached $6.50? A. It continued in that way until the strike of 1902 when the opening price was made and since that time I think there has only been one advance, plus the tax, since 1902.

Q. One advance in the price plus the tax? A. That was the time the President interfered.

Q. That was in 1902? A. Yes, sir.

Q. Since then have prices been advanced? A. They have been practically the same, except when we had the strike in 1912, and then that tax. There has only been one change in those twelve years.

Q. That makes two changes and the tax? A. Yes, sir. The tax. That was not by the company.

Q. Then there was a rise in consequence of the strike of 1912? A. In 1912 of twenty-five cents; yes, sir.

Q. That makes two changes? A. Yes, sir; including the tax.

By Mr. Kingsbury:

Q. Your present lease from the Central Railroad of New Jersey is the one of June 15th, 1910, is it not? A. I think it is; yes, sir.

Q. That lease binds you, does it not, to purchase all the coal which you handle at the demised premises from points north or west from Mauch Chunk, Carbon County, Pennsylvania? A. That is the only place you could get the coal. There is nobody else that could give the quantity of coal that would justify the keeping of a pocket of that kind and paying that rent. There is nobody else large enough on that railroad.

Q. The lease also bonds you to cause all the coal that you handle at the demised premises to be transported over the lines of the railroads owned, controlled or operated by the lessor, does it not, and you have lived up to that agreement? A. We could not get it from anywhere else.

Q. You could get coal from other parts of Pennsylvania, could you not, and haul it over other railroads and bring it to your yard? A. That would be poor railroading, because they would have to divide with this particular road part of the transportation, and they reach the same section themselves.

Q. It might be good business for you, might it not? A. Yes, sir; it would be rattling good business for me, if they would allow me to do that. I do not know that it would. I do not see much advantage in it. They are all the same price to all intents and purposes, except when I buy of a middle house, and then I pay a premium.

Q. You spoke of the plan of reducing the price in April and then raising it successively. Do you know whose plan that was? A. He was a genius. I really do not know.

Q. How did the plan come to your knowledge? A. The plan came in the shape of a notice that they intended, for the benefit of the business, to make it so that they could con-

tinue mining during twelve months, to induce the customer to take his coal, because there was a reduction in the price.

Q. In what mystic way did they give you this notice or send you this notice? A. I presume in the good old days they conferred together about it. I have not an idea at all.

Q. Who were they? A. They were the coal companies.

Q. What do you mean by the coal companies? A. Whoever represented them at that particular time. I do not recollect, because that is rather a piece of ancient history. That has been prevailing now for about fifteen years.

Q. You mean by that the so-called railroad companies? A. I mean every coal company has a sales agent, and the sales agent presumably notified the others. I know nothing about it. They notified me.

Q. From whom did your notice come? A. Every blasted one.

Q. All about the same time? A. Nearly at the same time.

By Mr. Coudert:

Q. An avalanche? A. There is not so many.

By Mr. Kingsbury:

Q. How many? A. Five or six.

Q. In your direct examination you used some phrase about telling these coal agents the truth if you dared to. A. Who? I am not afraid of anybody to tell the truth. I would be surprised if anything has cropped out in my testimony that would even imply that I am afraid of anybody, except physically I might be very much afraid. I am not afraid of any of the coal companies, because they need me just as badly as I need them. Somebody must handle the coal to meet the consumer.

Q. I think you used such a phrase. A. It did not apply in that particular. That is very sure.

Q. You were speaking a few moments ago before this discussion arose, of there being only a comparatively few coal companies, you said five or six. What ones were they? A. There is the Lehigh Valley, the Lehigh Coal and Navigation, the Delaware, Lackawanna and Western, the Williams & Peters, who represent the Erie Railroad, the

Keystone Coal Company, the Susquehanna Coal Company, Dickson & Eddy, who are the Ontario and Western, and the Delaware and Hudson in this market, and then there are a number of individual operators.

Q. And the Reading and the Central? A. And the Reading and the Jersey Central, the D., L. & W. The D., L. & W. does not bring much coal except the smaller sizes in this market. They send most of their coal out west. The Philadelphia and Reading and the Jersey Central, this is the natural market for them. That is why they bring their coal here.

Q. You buy your largest amount from the Lehigh and Wilkes-Barre? A. For the very reason that I can't get it from anybody else.

Q. Who do you buy your next largest amount from? A. I think the next largest is from the D., L. & W. of the junior sizes.

Re-direct examination.

By Mr. Reynolds:

Q. Did I correctly understand you to say that the chief incentive for the use of anthracite coal here in New York arose from the laws called the smoke ordinance? A. Yes, sir. Everybody would be using bituminous coal were it not for that, because bituminous coal is intrinsically worth more money, even if you have to pay more for it. The generating power is greater.

Q. There are more thermal units per ton of bituminous than anthracite? A. Yes, sir; just about two thousand.

Q. It is a better fuel for heating and steam raising purposes? A. Yes, sir.

Q. The advantage of anthracite I understood you to say was in cleanliness and absence of smoke? A. That is absolutely necessary in New York, because they will not permit you to use it.

Q. So people by law make this market for their anthracite here, by this smoke ordinance, is that correct? A. That is correct; yes, sir.

Q. Some mention was made of your lease. What is the

rental you pay for that property you lease from the Central? A. $30,000 a year.

Q. Do you lease any property on Manhattan Island for coal yard purposes? A. Yes, sir.

Q. Do you lease any property from the city of New York? A. Yes, sir.

Q. Where is that leasehold located from the city of New York? A. Ninety-sixth Street and Riverside Drive.

Q. Has that railroad tracks right beside it? A. The New York Central.

Q. And has railroad facilities right adjacent to it? A. Yes, sir. But they are not adapted for the coal business.

Q. So that you could get a rail connection there if you wanted it? A. Yes, sir.

Q. That I understand is right in the heart of New York City? A. Yes, sir.

Q. Is it more or less valuable from a rental standpoint, in your judgment as a large lessee of properties all over the city, than the property leased to you by the Central Railroad Company of New Jersey? A. Most emphatically.

Q. Which; more or less? A. More, of course.

Q. Very much more valuable? A. It is a very valuable piece of property, of course, up around the Drive, right on the river front, and in the section of the city that it reaches a territory almost within a short distance of where the largest consumers of coal in New York City are.

Q. All the big apartment houses along the Riverside Drive are in that vicinity? A. Yes, sir.

Q. It is a highly desirable leasehold property? A. A very desirable property, particular so.

Q. Do you have to pay any taxes on that property? A. No, sir. We pay $3650 a year rent for that property and no taxes. That is my recollection of it.

Q. For the Jersey Central property you pay $30,000? A. Yes, sir.

Q. It was, in your judgment, a fact that there is no favor to you in that lease from the New Jersey Central? A. I think it is quite the reverse. I never would have thought of paying it if you had not put into your tariff an allowance

of fifteen cents a ton, and there is no man living could live there and pay that rent.

Q. What was that allowance? A. Fifteen cents a ton you allowed me.

Q. On what? A. On all the coal that came to New York over the ferry. And that was not exceptional on the part of every railroad over in that section.

Q. What was the purpose of giving fifteen cents when it came over the ferry? A. To put it on a parity with the New York dealer. That is ourselves, in other words.

Q. Was the ferry charge fifteen cents? A. The ferry charge was an average of fifteen cents—ran from ten to twenty cents.

Q. The purpose of the allowance was to——. A. Equalize the landing of coal in New York City.

Q. To make it the same cost whether you got it over the piers and into the barge, or took it over the trestle on the land and hauled it by team? A. Yes, sir. In New York you can make on an average six trips a day in a given number of hours, twelve, it takes now, and it used to take ten. Over there we make four.

Q. Was the effect then to make the cost of your coal to you in New York the same whether you brought it to New York in barges from the piers by water, or brought it over the trestles on the land by wagon across the ferry, and had the ferry charge of fifteen cents refunded to you? A. Yes, sir.

Q. The price was just the same either way? A. Yes, sir.

Q. That was the purpose of it? A. Yes, sir. That was the intention.

Q. And it appeared in the tariff which was in force for a number of years? A. Yes, sir. But I inherited it, and only kept it long enough to get my seat warm, with my usual luck.

Q. Going to the question of the tax which was put upon the coal by the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company, I understood in your cross examination that that additional

tax was put on coal sold by those companies in July or August of last year? A. Yes, sir.

Q. Well, in advance of any such movement on the part of any other company? A. Yes, sir. December 1st was when the next one was put on, and some did not put it on until the 1st of April.

Q. Do I understand you correctly that the Lehigh and Wilkes-Barre and the Philadelphia and Reading put on exactly the same per cent. of tax as the State provided, namely, two and a half per cent.? A. That is what they claim. I do not know anything about the statute at all.

Q. Those companies did put on an item of two and a half per cent. on the bill? A. Yes, sir.

Q. And stated that that was put on to meet the Pennsylvania State tax? A. Yes, sir.

Q. Is it well understood in the trade that if that tax statute is declared unconstitutional that those companies will refund the tax to you? A. I do not know. I think that is the general feeling, but I am not sure of that. That is the impression I have personally. By putting it on in that shape, I think the intention is to refund it if they get it back.

Q. The other companies, however, did not follow that method of putting on the tax? A. No, sir. There is an absolute advance in the price of coal.

Q. Of the other companies? A. Yes, sir.

Q. They put a full advance on? A. I think with the exception of John Markle, who is doing the same thing, and who is an individual operator. He is mining coal on the Lehigh Valley Railroad. I think he does the same thing. That is my impression.

Q. Do your purchases from various coal producers fluctuate with a good deal of variability from year to year? A. From the different concerns?

Q. Yes. A. Yes, sir.

Q. You have no general ratio of purchases? A. No, sir. We could not, as matter of fact, because we can only sell coal when the people want it, and the sale of it depends entirely on the weather condition.

Q. And that applies as well to the proportions of coal that you take from the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company? A. Yes, sir.

Q. Do you, as matter of fact, receive any circular of the prices from the Lehigh and Wilkes-Barre? A. No, sir; I do not. I have from the Reading. I do not think I have received a circular from the Lehigh and Wilkes-Barre. I think I have never received one, not of late years, anyhow.

Q. Going back to the question Mr. Kingsbury was interested in; is there any form or fear or threat or intimidation or persuasion, or anything else that is iniquitous that you know of, that is used by any of these coal companies to influence you to purchase coal from them? A. No, sir; there is not. They are afraid of their own shadows.

Re-cross examination.

By MR. COUDERT:

Q. Did you ever receive any circular price list from the Reading? A. Yes, sir.

Q. But not from the Lehigh and Wilkes-Barre? A. No. That never occurred to me until Mr. Reynolds called my attention to it.

Q. And you know the prices are the same? A. Yes, sir; it was the same.

Q. You believe that there is an understanding as to a refund of that two and a half per cent. tax if it should be declared unconstitutional. To whom would it be refunded? A. I presume it would be refunded to the dealer.

Q. It would be refunded to you, would it not? A. Yes, sir.

Q. And of course, you would refund it to the public? A. I would not if I could help it.

Q. You would find it difficult to do it? A. It would be spread out in such small amounts they would consider it an insult.

Q. I understood you to say it was the small sizes of coal, pea and buckwheat, that came in competition with the

bituminous coal? A. It used to be pea and buckwheat, but pea coal has got to be a household coal.

Q. Which is the coal that comes in competition with the bituminous? A. Buckwheat Nos. 1, 2 and 3. One we sell at $2.85—just think of selling a ton of coal and carting it for $2.85.

Q. What profit is there on that? Very small? A. It would be hard to find. If you did not do any other business but that, it would not pay.

Q. Why do you sell that so low? A. Because we cannot help it. It keeps our trucks going in Summer.

Q. So you have to make your profit on the larger sizes? A. Yes, sir. If we did not have the steam trade and the domestic sizes we would have to get a dollar a ton, because nobody would want it except in Winter time, and then you would have to give it to them.

Q. How does the profit on the larger sizes, which do not compete with the bituminous coal, compare with the profit on the smaller sizes? A. We make perhaps thirty or thirty-five cents a ton on the domestic, and practically nothing on the smaller sizes, excepting it bears its proportion of the overhead charges.

ROBERT C. HILL, having been duly sworn, was examined as follows:—

By MR. REYNOLDS:

Q. What is your business? A. We are miners and shippers of anthracite and bituminous coal, and we handle besides coals on commission.

Q. What is your firm or company name? A. Madeira, Hill & Co., a New Jersey corporation. I am vice-president of that company.

Q. You say you are miners of anthracite coal? A. Yes, sir.

Q. As a matter of fact, are you one of the largest miners of anthracite coal known as the independent miners? A. I think we have the largest tonnage probably, that is handling our own product.

Q. Your mines are located in different parts of the coal

regions, and you ship over almost every one of the anthracite railroads, do you not? A. The Pennsylvania Railroad, the Lehigh Valley, the Jersey Central, the D. & H., and the Reading, and I guess nearly all of them. We do not ship over the D., L. & W. or the Ontario and Western.

Q. How long has your concern been in the business? A. We were incorporated in 1893, and we took over the business in 1892, of George B. Newton & Co., which had been in business since 1869 or 1873, I guess.

Q. So you are one of the oldest concerns in the region? A. Yes, sir.

Q. In the distribution of coal I understand you to say you also purchase coal from other operators? A. Yes, sir.

Q. Do you purchase large quantities of coal from other independent operators? A. Large quantities. We purchase as it may be required, and also as the price will allow us to, that is, to advantage. If we can supplement our own shipments by outside purchases, of course, we are very glad to.

Q. You have got a following among the independent producers? A. Yes, sir. We are handling quite a lot of independent operators' coals in that connection.

Q. How wide a field do you distribute that coal over? A. I suppose we distribute directly over as wide a field as any of them, from Florida up into Nova Scotia—all along the coast.

Q. At what point in the United States can you say, from your experience, that a ton of coal has the greatest potentiality in competition? A. Without any question, at New York harbor. It has a wider market offered there than any other place that I should know of.

Q. It can from there be distributed to almost any coal consuming market on the eastern coast? A. Yes, sir.

Q. Are your headquarters in this city? A. My headquarters are in this city; yes, sir.

Q. You also have headquarters in Philadelphia? A. Yes, sir.

Q. What, in your judgment has been the effect upon the trade, that is, has it been to stimulate or to restrain it, of

the establishment of a plan of selling coal at a reduction of fifty cents a ton on the 1st of April and gradually increasing it ten cents a ton? A. It has been, I should think, in every way beneficial. It has made prices stable. It has made an inducement to buy in the Summer months, which ordinarily would be practically barren. It has kept the mines going regularly during those Summer months, which ordinarily would be working on two or three days a week time, and it has enabled the purchaser to determine ahead as to what the prices were going to be, knowing what he would have to meet, what competition he would have to meet in prices, and enable him to make his contracts at a lower figure so he could take care of his trade in a dull time with an assurance of supply.

Q. You think that has been a benefit to you as an independent producer of coal? A. Yes, sir; as an independent, and also as selling coal on commission. And also to a dealer.

Q. Has it been your experience in your contracts with the numerous other independents who mine coal and sell through you that it is their experience that trade has been benefitted and promoted rather than restrained? A. Unqualifiedly.

Q. How do you transport your coal from New York to various destinations? A. By barges which we charter. In New York harbor we charter from the firm of M. J. Tracy, lighterage owners, and for our outside business we charter either schooners or barges from regular vessel brokers, or directly though the companies, if they have barges to offer. We charter Lehigh Coal and Navigation barges, D., L. & W. barges, O. & W. barges—we charter all classes of equipment.

Q. Would it be a fair question to ask you (if you have some trade reason for not desiring to answer, do not let me induce you to answer), what is the charter rate you are able to get? A. The company charter rate from the upper ports is fifty cents to Boston. Everything is quoted to Boston. Fifty-five cents from the lower ports. That governs Elizabethport, Port Johnson, Perth Amboy and South Amboy.

Q. Are you able to get coal transported a great deal of the time through producers or other outsiders at about the same price? A. There are as good ocean-going equipment usually, but we have chartered D., L. & W. barges at absolutely competitive figures, at the rates I have named, 55 cents from the lower ports. We are paying the D., L. & W. to-day 60 cents. About three weeks ago we were quoted 55 cents, which is the regular company barge rate. I do not believe any of them can make any money at 55 cents. They are simply keeping down expenses by keeping the men employed and helping out on the overhead charges. Out of that they are paying the towing charge and for the trimming of the coal—the trimming of the coal is three cents a ton. That is, to transport it to Boston, and they cannot make probably more than three trips every two months.

Q. You regard that then as a very reasonable charge? A. Yes, sir.

Q. Not at all an extortionate charge? A. Quite the reverse.

Q. Do you purchase any coal from coal companies, the stocks of which are supposed to be owned by the railroad companies? A. Yes, sir.

Q. Do you find those coal companies deal with you and sell coal to you? A. Yes, sir

Q. Without oppression? A. Without the slightest.

Q. They do not appear to try to drive you out of the business by unfair methods? A. We are buying coal from all the companies at different times, more particularly from the Lehigh and Wilkes-Barre, the Reading, the Jersey Central and the Susquehanna Coal Company.

Q. They do not try to freeze you out? A. Not at all.

Q. Or use methods that are improper? A. That would look like encouragement to me, that they were willing to sell us coal.

Q. Do you find that they compete for the business of selling coal to you? A. Very much so.

Q. Does that competition extend even to the business of selling to you as between the Philadelphia and Read-

ing Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company? A. It does; yes, sir.

Q. You do not find, do you, that those two companies compete as to the matter of price? A. Except on their special coals.

Q. On standard coals? A. On coals of similar character they do not compete in price. Their prices are uniform, except on the smaller sizes. There is a difference between pea and buckwhat.

Q. Do these companies, both of them, endeavor to sell you coal and solicit your business? A. They do at certain seasons of the year. Of course, when coal is scarce, they do not have to persuade anybody to buy coal.

Q. As between the Lehigh Coal and Navigation Company on the one hand and the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company on the other hand, have you any keen competition? A. Just as keen as between myself selling my own coal and the Reading.

Q. You mean by that, that so far as you can tell, the Lehigh Coal and Navigation is just as much an independent producer as Maderia, Hill & Co.? A. Absolutely so.

Q. Does that competition extend to the point of the Lehigh Coal and Navigation Company shading the prices? A. Shading prices or raising the prices. If you want their coal, they will raise their price of coal at certain seasons of the year. They are an absolute free lance. I do not think they have any standard circular.

Q. Do they sell the coal for a little more than the regular price if the market is brisk? A. Yes, sir.

Q. And if the market is dull and competition in price uncertain, they compete and give you a better price than the other company? A. Yes, sir.

Q. Does the competition in price involve such reductions from the circular as to be convincing proof to you of a *bona fide* desire to undersell and compete? A. Yes, sir. At certain times of the year the movement of coal is very slow. The Reading will offer an inducement by bill-

ing their red ash coal, which is selling at a circular premium of 50 cents a ton, they will bill that red ash coal as white ash in order to induce you to take their white ash at a certain price, in competition with the Lehigh and Wilkes-Barre, or in competition with anybody else. That is a condition that I do not know obtains generally or is generally known, but they have a circular price for Schuylkill Red Ash coal 50 cents over white ash price. That coal will be billed to an individual at 50 cents less than red ash, calling it white ash—the bill of lading calling it white ash coal, but the consumers get red ash coal, which is worth a premium of 50 cents.

By Mr. Coudert:

Q. Are there any other things of that kind? A. I do not know of any other difference such as that. You are getting a better article of stove which is billed at the white ash price.

By Mr. Reynolds:

Q. Does the Lehigh Coal and Navigation Company also compete in a business way in that manner at times? A. Very much so. They have not the same opportunity, because they only have one grade of coal, the Lehigh Coal and Navigation Company.

Q. But they do shade the price? A. They will shade the price, or will offer an inducement on a size that is scarce, giving you a larger tonnage of that if you will move something they want to move. For instance, their circular for pea may be $3.50, we will say, and they will make that price $3.20 if you will take cars of stove coal which they want to move at the circular price. That is an inducement, though it does not show on the circular of the stove price.

Q. Has that condition obtained for all the years you have been in business? A. Yes, sir; absolutely.

Q. You are in about the best position of anybody in this part of the country to testify as to that by reason of the breadth of your market and your dealing with the independents? A. The fact that we are independent oureslves, are dealing with independents, and are also dealing with the

companies, I think we ought to have as good a range as most of them. I do not know anybody that should have more. Our Philadelphia office has a very large business. In fact, that is our main office.

Q. Do these same conditions obtain there? A. So far as I know.

Q. During these years is it a fact or not that there has been a gradual substitution of other fuels for anthracite coal in some sections of the country over which you distribute anthracite? A. Yes, sir; substitution, not so much in fuel, except that they use gas for fuel. They use gas ranges. That has certainly taken a very large amount, the substitution of gas ranges for coal ranges has had a great influence on the use of anthracite.

Q. That has taken a good deal of coal? A. That undoubtedly has taken a great deal of coal.

Q. Do you class the Lehigh Coal and Navigation Company as an entirely independent company? A. Yes, sir. Then the bituminous coal, of course, is more of a feature than it was, where they have been able to install smoke consuming devices. The Edison Company has recently gone on to bituminous coal as against anthracite. They, I suppose, used as much as any other consumer of anthracite coal in this market. They have recently transformed most of their boilers with smoke consuming devices.

Q. Is it a fact that the spur of necessity for the consumption of anthracite coal in this market is to a very large extent the smoke ordinance? A. So far as the junior sizes, the steam sizes, are concerned, undoubtedly that is so.

Cross examination.

By Mr. Coudert:

Q. You spoke of billing red ash coal by the Reading Coal and Iron Company for fifty cents less than the circular, and selling it as white ash? A. That is rather a complicated condition. We will take the circular at any price you choose. The circular of the Reading Railroad reads "Free white ash stove coal $5.00. Schuylkill Red Ash stove coal

$5.50, Lykens Valley stove coal $6.00." If the conditions are so slow that the movement of stove coal that is, the white ash, they will say, "If you will take a hundred tons of white ash stove coal we will give you a hundred tons of the red ash coal at the white ash price." They will bill them to you as stove coal, as free white ash stove coal, without giving them a name, but the consumer will get the Schuylkill red ash, which is worth the premium of fifty cents, at the same figure as the white ash.

Q. Why do they do it in that way? Why do they not simply reduce the rate? A. I suppose they do not want to have any come-back from somebody else in that same connection by their breaking the price of the stove coal, the D., L. & W. might kick, or the O. & W., or anybody.

Q. They break it as a special favor to you? A. Not at all. They break it because they want to move their white ash stove coal. They do not break it for me.

Q. They do not break it for everybody? A. They may if they want to move it. I do not know whether they do. Why shouldn't I compete with any coal I might have myself and make the coal $4.50?

Q. Why do they resort to that subterfuge? A. Only to move the coal on which they are long. They are long on the free white ash stove.

Q. Why do they not move it directly by reducing the price of the coal? A. I do not know.

Q. What is your theory about it? A. It is on the same theory, if Tiffany had three prices for their diamonds, where would you get off? You cannot make a competition on going into a jewelry store. If they had three prices you would never be sure you were getting the jewelry as low as any of your friends. In going into Tiffany's you are pretty sure you are getting the only price that they have. I think by going to the Reading Railroad you are pretty sure that you are getting the only price they have there.

Q. As matter of fact, in regard to this red ash, they sell it in considerable quantities at less than circular price under another name? A. I do not say considerable quantities of red ash.

Q. How much? A. I only know of one or two instances that have come before my attention within the last two years, where at certain times of the year, when the coal was so slow on lots of certain specific sizes, I do not know what sizes, where it was desirable to move them, and where the competition came up between the Reading and the Lehigh and Wilkes-Barre, the Lehigh and Wilkes-Barre were long, but they had no inducement to offer.

Q. Do they have the same kind of coal? A. No; they do not.

Q. Then they do not compete in the kind of coal that they do not both have, do they? A. They were competing in the free white ash, which the Reading was long on, and the Reading induced the buyer to take the kind of coal they wanted to move, but the Lehigh and Wilkes-Barre would not let the seller offer them the red ash coal as an inducement at fifty cents less than their circular price.

Q. In other words, they were dividing the coal between the two companies? A. Not at all. They were competing with the Lehigh and Wilkes-Barre by offering the consumer the inducement of fifty cents a ton by giving him red ash coal at a white ash price to induce the customer to buy the white ash coal which the Lehigh and Wilkes-Barre could have provided.

Q. And, of course, the Lehigh and Wilkes-Barre were in complete ignorance of that, you believe? A. Absolutely; yes, sir.

Q. Although they had the same president? A. But the president and the sales agent are two different people.

Q. Do you say the sales agent was doing that on his own responsibility? A. Unquestionably he was doing that on his own responsibility. The sales agent draws his salary for the amount of coal he is able to sell, and he is answerable to his board of directors and the stockholders for the amount of tonnage he sells.

Q. Is that the explanation of why he resorted to a subterfuge, that he did not desire his own president and officers to know what he was doing? A. I do not think

you appreciate what this agent has to do, where the sale of the coal is an important item, where the coal is being forced on him, and he is looked to to move the coal as it arrives, which is paying railroad demurrage of one dollar a day per car, which is charged against the coal company if it delays the cars, and he is up against the movement of that coal, and he has to get rid of it somehow. If he can force the movement of it by making an inducement which is a concession, if he is selling it that much less than circular, it does not make any difference whether he is competing with the Lehigh and Wilkes-Barre or the Delaware, Lackawanna and Western or the Lehigh, he is competing with somebody who would be selling the coal. That is the only concession he has been able to make and not break his circular.

Q. Why is not he breaking his circular by the sale of red ash for 50 cents less than this red ash sells for? Do you think because he christens it white ash? A. He has not broken any circular, because he has sold stove coal, and there is nothing there to show that there has been any subterfuge, and the customer is getting what he bought.

Q. There is nothing to show any subterfuge? A. No, sir.

Q. The subterfuge does not appear? A. No, sir. The quality speaks for it.

Q. Do you receive coal circular prices from the various companies? A. We do if we ask for them.

Q. Do you ask for them? A. Yes, sir. We ordinarily do. We have our application on file. Therefore, I would say we receive them.

Q. You receive them from whom? A. From the D., L. & W., from the Philadelphia and Reading, from the Ontario and Western—I imagine we get them from anybody we ask for them. Those are the ones I recollect.

Q. Do you get any circulars from the Lehigh Coal and Navigation Company? A. I do not recall that we have.

Q. How do you know their prices? A. By us asking for them.

Q. You ask their coal sales agent? A. Yes, sir.

Q. Does he call on you? A. It depends on whether he wants to move the coal, or whether I want to buy it.

Q. Both? A. Yes, sir. Mutual. We are both interested.

Q. Do you buy a great deal from the Lehigh Coal and Navigation Company? A. Our purchases for the last two and a half years amounted to $66,000 from the Lehigh Coal and Navigation Company in this office. I do not know what the Philadelphia office bought.

Q. Are you in this building? A. Yes, sir.

Q. And your company is a tenant of the building? A. Yes, sir. And pay them a very low rent. We have a very desirable office. We have been here twenty years. We purchased through our New York office from the Lehigh Coal and Navigation Company, 1912, 1913 and 1914, for the three months of this year, $66,000. The Lehigh and Wilkes-Barre $195,000. The Lehigh Valley, $103,000. The Philadelphia and Reading, $123,000.

Q. What is the cause which induces you to buy from one of these vendors rather than from another? A. I think in a good many instances the assurance of delivery. In another instance it might be quality. In another instance it might be price. In another instance it may be facilities for barges.

Q. Where do they deliver to you? A. F. O. B. shipping port, or alongside whatever point of delivery we are making.

Q. Are you always able to get all the coal you want from those various companies? A. No, sir.

Q. You sometimes find it difficult to do? A. Yes, sir. That is the reason why we buy where we have reasonable assurance of delivery.

Q. Have you any special relations, personal or otherwise, with the gentlemen connected with the Jersey Central or the Lehigh and Wilkes-Barre? A. Not the slight-

est. Other than we are in the same building, and have been for twenty odd years.

Q. This building belongs to the railroad, does it not? A. As far as I know.

Q. You have the same landlord, and have had for twenty years? A. Yes, sir.

Q. You are in the same business? A. Yes, sir. Not the same business as the railroad, the same business as the coal company.

Q. What do you mean by an "independent," when you use that phrase? A. An independent operator is one that has no connection, so far as I know, with any of the railroads or railroad coal companies, where the stock of the coal companies may be owned by the railroad companies.

Q. And that has no connection with a railroad? A. Yes, sir.

Q. Did you characterize the Lehigh Coal and Navigation Company as such? A. Yes, sir; as independent.

Q. Are you unaware of the fact that it owns several railroads? A. I mean "independent" in the general pharaseology as we would designate them or class them other than the companies. The usual phrases in the trade are "the independents" and "the companies." The companies as we know them are the O. & W., the Reading, Dickson and Eddy, the Erie, Williams and Peters, the Lehigh and Wilkes-Barre, the Lehigh Valley and the Susquehanna Coal Company, and the Delaware, Lackawanna and Western.

Q. But you did not mean that the Lehigh Coal and Navigation Company was independent in the sense that it was not connected with any railroad, did you? A. I meant it was not connected with the railroad companies that we know as the companies.

Q. With these very railroads? A. As we know them as the companies.

Q. But it is not independent in the sense that it does not own or is not connected with any railroad, as I take it. Have you any connection with any railroad? A. We

have no connection, except we may own a small railroad switch of four or five miles. Their switch may be longer. I do not know what switches they have. The Lehigh and New England do own a part of it, I believe.

Q. Your company does not own any railroad except the siding? A. No; except four or five miles of switch, which may be incorporated as a railroad in the State of Pennsylvania.

Q. On what lines are your coal mines situated? A. On the Pennsylvania, the Lehigh Valley, on the D. & H., and on the Reading.

Q. Do you sell as a retailer in the market? A. No.

Q. You sell to the large commission merchants, like Mr. Burns? A. Yes, sir. We sell to the retailers. We are mining bituminous coal as well.

Q. What difference do you find in the price between the Lehigh Coal and Navigation Company and the Railroad Companies? A. Their circular prices, if the Lehigh Navigation issue a circular, or the prices they are asking during the current months I think are the same. Any concession of that kind must be by negotiation.

Q. So that unless there are some special concessions, as you say, or concessions through negotiations, the prices are the same? A. Their asking prices are the same. That would apply to my own product as well.

Re-direct examination.

By Mr. Reynolds:

Q. Is this locality here in this part of the city of New York generally the coal trade center? A. Yes, sir.

Q. And a great many of the coal producers and coal dealers are in this particular locality?

A. I think all of them, with the possible exception of one or two that have moved up from the New York Central.

Q. And for years there have been a number of them in this building, have there not? A. Yes, sir.

Q. A great many of them in the West Street building? A. Yes, sir; I think so.

Q. And there were a great many of them for years in the Coal Exchange at Cortlandt and Church Streets, were there not? A. Yes, sir.

Q. It has always been the coal trade center. A. Yes, sir.

Q. And the tenants of the building are very generally in the coal business, are they not?

A. I came here on account of the convenience. The president of our company wanted us to go down to No. 1 Broadway but the convenience was so much greater in this building going over to Philadelphia, as I do very often, that I came here. That was my only reason for coming here.

Re-cross examination.

By Mr. Coudert:

Q. You spoke of bituminous competition. Has your anthracite business fallen off owing to the bituminous? A. Our anthracite business has increased. But that has been increased by the ownership and acquiring of other mines. We have acquired more mines. We sell more anthracite coal than we have done.

Q. Right along? A. Yes, sir.

Q. It is impossible for the bituminous to compete, is it not, in a city which is unwilling to be defiled and polluted with smoke? A. The situation, it would seem to me, in New York, is very largely one of smoke consuming devices. They have been able to accomplish something in that line, where they have been able to burn bituminous coal. The Interborough is using lots of bituminous coal. Also the Edison Company.

Q. Do they use the smaller sizes of anthracite also? A. The Interborough does not, as far as I know. The Edison Company did up to last year.

Q. Do these small sizes come in competition with the bituminous? A. Yes, sir.

Q. Do you sell them? A. Yes, sir.

Q. Is there much profit in them? A. Very small, except as it helps the overhead. It costs as much to produce

a ton of small coal as it does a ton of large coal, and we sell them for less money.

Mr. Reynolds offered in evidence record of the case of Arnot against the Philadelphia and Reading Railway Company and others, referred to in the answer.

Government's counsel reserve the general objection as to materiality and relevancy.

The record is as follows:—

IN THE COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA.

June Term, 1892. No. 1.

IN EQUITY.

Matthias H. Arnot, Plaintiff,

vs.

The Philadelphia and Reading Railroad Company, the Lehigh Valley Railroad Company, the Lehigh Coal and Navigation Company, the Central Railroad Company of New Jersey, the Port Reading Railroad Company, the Lehigh Valley Coal Company, the Philadelphia and Reading Coal and Iron Company, and the Lehigh and Wilkes-Barre Coal Company, Defendants.

MASTER'S REPORT.

FILED DECEMBER 5TH, 1892.

I, Harry S. Meyer, Prothonotary of the Common Pleas of Lycoming County, do hereby certify that this Book is a correct and true copy of the Master's Report in No. 1 June T. 1892, In Equity as the same appears of record in this office.

Witness my hand and the seal of said Court this 31st day of Jany. 1910.

HARRY S. MEYER,

[SEAL] *Prothy.*

IN THE COMMON PLEAS OF LYCOMING COUNTY.

June Term, 1892. No. 1.

IN EQUITY.

Matthias H. Arnot, Plaintiff,

VS.

The Philadelphia and Reading Railroad Company, the Lehigh Valley Railroad Company, the Lehigh Coal and Navigation Company, the Central Railroad Company of New Jersey, the Port Reading Railroad Company, the Lehigh Valley Coal Company, the Philadelphia and Reading Coal and Iron Company, and the Lehigh and Wilkes-Barre Coal Company, Defendants.

TO THE HONORABLE JOHN J. METZGER, JUDGE OF THE COURT OF COMMON PLEAS OF LYCOMING COUNTY:

The undersigned Master and Examiner appointed by your Honorable Court respectfully represents:—

On the seventh day of March, 1892, the plaintiff filed his bill against the Philadelphia and Reading Railroad Company, the Lehigh Valley Railroad Company, the Lehigh Coal and Navigation Company, the Central Railroad Company of New Jersey, and the Port Reading Railroad Company, in which he complains and says:—

"1. That the defendant, the Philadelphia and Reading Railroad Company, the Lehigh Valley Railroad Company, and the Lehigh Coal and Navigation Company, are corporations created by and existing under the laws of the Commonwealth of Pennsylvania; and that the defendants, the Central Railroad Company of New Jersey and the Port Reading Railroad Company, are corporations created and existing under the laws of the State of New Jersey.

"3. That the said defendant, the Philadelphia and Reading Railroad Company, owns and operates a railroad.

"That the said defendant, the Philadelphia and Reading Railroad Company, is the owner of all or of a majority of the capital stock of the Philadelphia and Reading Coal and Iron Company, a corporation created by and existing under the laws of Pennsylvania, and engaged in mining and shipping of coal in the State of Pennsylvania.

"6. That the said defendant, the Lehigh Valley Railroad Company, owns and operates a railroad consisting of the main line thereof extending from Phillipsburg, in the State of New Jersey, on the eastern bank of the river Delaware, opposite the town of Easton, in the county of Northampton, in the State of Pennsylvania, to Wilkes-Barre, in the county of Luzerne, in the same State, and of branches as follows:—

"The Lehigh and Mahanoy Branch, extending from Black Creek Junction, on the said Beaver Meadow Branch, in the county of Carbon, to Mt. Carmel, in the county of Northumberland, in the same State.

"7. That the said Lehigh Valley Railroad Company is possessed of leasehold and other interests in the railroads of other companies within the State of Pennsylvania, by means of which interests it controls and operates the said railroads as a part of its system.

"8. That the said defendant, the Lehigh Valley Railroad Company, is the owner of coal lands in the counties of Luzerne and Carbon, in the State of Pennsylvania, and is engaged in mining and shipping coal therefrom.

"9. That the said defendant, the Lehigh Valley Railroad Company, is the owner of all or a majority of the capital stock of the Lehigh Valley Coal Company, a corporation created by and existing under the laws of the State of Pennsylvania, and engaged in the mining and shipping of coal in the State of Pennsylvania.

"10. That by certain agreements made between the said defendant, the Central Railroad Company of New Jersey, and the said defendant, the Lehigh Coal and Navigation Company, the said defendant, the Central Railroad Company of New Jersey, has leased and is in possession of and operates and controls a railroad belonging to the said Lehigh Coal and Navigation Company, called the Lehigh and

Susquehanna Railroad, extending from Phillipsburg, in the State of New Jersey, to Union Junction, in Luzerne County, Pennsylvania, and having sundry branches within the said State of Pennsylvania, which branches are included in the grant aforesaid to the said Central Railroad Company of New Jersey, and are in its possession and are operated and controlled by it.

"11. That your orator is informed and believes, and expects to be able to prove, that the said defendant, the Port Reading Railroad Company, and the said defendant, the Central Railroad Company of New Jersey, have made an agreement whereby the said defendant, the Port Reading Railroad Company, has leased the works and franchises of the said defendant, the Central Railroad Company of New Jersey, including the works and franchises of the said Lehigh and Susquehanna Railroad.

"12. That the said defendant, the Philadelphia and Reading Railroad Company, is the owner of the whole or of a majority of the capital stock of the said defendant, the Port Reading Railroad Company.

"13. That your orator is informed and believes, and expects to be able to prove, that the said defendants, the Philadelphia and Reading Railroad Company and the Lehigh Valley Railroad Company, have made an agreement whereby the said defendant, the Philadelphia and Reading Railroad Company, has leased the works and franchises of the said defendant, the Lehigh Valley Railroad Company, and is in control of said works and franchises, and of those of the railroads controlled and operated by the said Lehigh Valley Railroad Company.

"14. That the works and franchises of the Lehigh Valley Railroad Company leased to and in control of the Philadelphia and Reading Railroad Company by means of the agreement aforesaid, are those of a railroad corporation owning or having under its control a line parallel to and competing with the Philadelphia and Reading Railroad Company.

"15. That the works and franchises of the said defendant, the Lehigh Coal and Navigation Company, which (through the medium of the lease aforesaid to the Central

Railroad Company of New Jersey of the Lehigh and Susquehanna Railroad), have been leased to and are in control of the said Port Reading Railroad Company, are those of a railroad, canal, and other corporation owning or having under its control a line parallel to and competing with the Philadelphia and Reading Railroad Company.

"16. That your orator is advised and believes that the agreement aforesaid between the said defendants, the Lehigh Valley Railroad Company and the Philadelphia and Reading Railroad Company, is *ultra vires*, and if allowed to stand it will be prejudicial to the interests of your orator, and will work him irreparable injury; and that the agreement between the Central Railroad Company of New Jersey and the Port Reading Railroad Company, so far as said agreement is in relation to or affects the said Lehigh and Susquehanna Railroad and its branches, is also *ultra vires*, and if allowed to stand it will be prejudicial to the interests of your orator, and will work him irreparable injury.

"Your orator therefore prays:—

"*First.*—That the agreement of lease between the defendants, the Lehigh Valley Railroad Company and the Philadelphia and Reading Railroad Company, shall be declared to be invalid, void, and of no effect.

"*Second.*—That the agreement of lease between the defendants, the Central Railroad Company of New Jersey and the Port Reading Railroad Company, so far as said agreement is in relation to or affects the Lehigh and Susquehanna Railroad and its branches, shall be declared to be invalid, void and of no effect.

That on the twenty-second day of March, 1892, the plaintiff filed the following amendments to his bill of complaint:—

"1. The plaintiff amends his said bill by adding as parties defendant the Lehigh Valley Coal Company, the Philadelphia and Reading Coal and Iron Company, and the Lehigh and Wilkes-Barre Coal Company.

"2. The plaintiff avers and says that each of the said defendants added is a corporation created by and existing under the laws of the Commonwealth of Pennsylvania.

"3. That the Lehigh Valley Coal Company owns and leases certain lands in Pennsylvania containing anthracite coal, which it mines either directly or indirectly, and all of which coal is taken to market and is sold by the said Lehigh Valley Railroad Company.

"4. That the Lehigh Coal and Navigation Company leases and operates the Delaware Division Canal extending from Easton to Bristol, in Pennsylvania, and owns and leases certain lands in Pennsylvania containing anthracite coal, which it mines either directly or indirectly, and all of which coal is taken to market and is sold by the said Lehigh Coal and Navigation Company and by the lines leased by it to the said Central Railroad Company of New Jersey.

"5. That the said Lehigh and Wilkes-Barre Coal Company is the owner and lessee of certain lands in Pennsylvania containing anthracite coal, which it mines either directly or indirectly, and all of which coal is taken to market and is sold by the said Central Railroad Company of New Jersey.

"6. That the said Philadelphia and Reading Coal and Iron Company is the owner and lessee of certain lands, and is in the control of certain other lands in Pennsylvania containing anthracite coal, which it mines either directly or indirectly, and all of which coal is taken to market and is sold by the said Philadelphia and Reading Railroad Company.

"7. That the said Port Reading Railroad Company owns and operates a railroad extending from a point near the terminus of the Delaware and Bound Brook Railroad near Bound Brook in New Jersey to deep water in the Arthur Kill near the city of New York, and is controlled by the said Philadelphia and Reading Railroad Company, and that at the time of making the agreements named in the bill all or nearly all of the officers of the said Port Reading Railroad Company were filled by persons holding offices in the said Philadelphia and Reading Railroad Company.

"8. That the said Philadelphia and Reading Railroad

Company is engaged in the transportation of anthracite coal from the coal regions in Pennsylvania to points in Pennsylvania and to tidewater at Philadelphia, and to tidewater at or near the city of New York, and owns and leases certain lands in Pennsylvania containing anthracite coal, which it mines either directly or indirectly, and all of which coal is taken to market over its lines and is sold by it.

"9. That the Lehigh Valley Railroad Company, the Lehigh Coal and Navigation Company, and the Lehigh and Susquehanna Railroad are, each of them, engaged in the transportation of anthracite coal from the coal regions of Pennsylvania to points in Pennsylvania, and to tidewater at Philadelphia, and to tidewater at or near the city of New York.

"10. That the said Lehigh and Susquehanna Railroad and the said Lehigh and Wilkes-Barre Coal Company are controlled and operated by the said Central Railroad Company of New Jersey, which said railroad company owns and operates lines of railroad in the State of New Jersey, including a line from Phillipsburg to Jersey City, and which said railroad company is engaged in the transportation of anthracite coal from the coal regions of Pennsylvania to points in Pennsylvania, and to what is known as tidewater at or near the city of New York.

"11. That the principal markets for the sale of anthracite coal are those of New York and of Philadelphia, and that the point in or near each of these cities known as 'tidewater' is reached by the said Philadelphia and Reading Railroad Company by the said Lehigh Valley Railroad Company and by the said Lehigh Coal and Navigation Company respectively, either directly by their own lines, or by those owned, controlled, leased or operated by them respectively. That the point known as 'tidewater' in or near the city of New York is reached by the said Central Railroad Company of New Jersey by means of its own lines.

"12. That the only anthracite coal in the United States is situated in certain counties of the Commonwealth of

Pennsylvania, and comprises an area of about five hundred square miles, and that the parties defendant named in plaintiff's bill and in this amendment thereto, produce either directly or indirectly more than six-tenths of the whole product of the said anthracite region.

"13. That by an agreement made, the said Lehigh and Wilkes-Barre Coal Company has agreed to sell for nine hundred and ninety-nine years, to the said Philadelphia and Reading Coal and Iron Company, the entire product of the lands and collieries operated by the said Lehigh and Wilkes-Barre Coal Company.

"14. That by a certain indenture, agreement, made the eleventh day of February, 1892, by and between the Lehigh Valley Coal Company and the Philadelphia and Reading Coal and Iron Company, it was agreed that the entire products of the lands and collieries operated by the Lehigh Valley Coal Company should be sold and delivered to the Philadelphia and Reading Coal and Iron Company and should be taken, received, and paid for by the Philadelphia and Reading Coal and Iron Company, for and during the period of nine hundred and ninety-nine years; and by a certain other agreement made on the twelfth day of February, 1892, by and between the Central Railroad Company of New Jersey of the first part, the Philadelphia and Reading Railroad Company of the second part, and the Port Reading Railroad Company of the third part, the said the Philadelphia and Reading Railroad Company covenanted, engaged, and contracted to guarantee to the Central Railroad Company of New Jersey the performance and fulfillment by the Port Reading Railroad Company of all the covenants, stipulations, and agreements contained in the said lease, contract, or agreement entered into between the Central Railroad Company of New Jersey and the Port Reading Railroad Company; and by virtue, force, and operation of these said leases and agreements, the Philadelphia and Reading Railroad Company has leased and has acquired control, and has taken possession of, and is now operating all the property, railroads, canals, mines, collieries, rolling stock, works, rights, and

franchises in the State of Pennsylvania heretofore owned leased or controlled by and subsidiary to the Lehigh Valley Railroad Company, the Lehigh Valley Coal Company, the Central Railroad Company of New Jersey, the Lehigh and Susquehanna Railroad, and the Lehigh and Wilkes-Barre Coal Company, and in part the works, railroads, mines, and collieries of the Lehigh Coal and Navigation Company.

And that at all the points along their lines where the Lehigh Valley Railroad Company and the Philadelphia and Reading Railroad Company have parallel lines and at other points, and generally throughout the anthracite coal regions of Pennsylvania, the said corporations have heretofore competed generally for freight and merchandise and passenger traffic, and at the time of the execution of said contracts were parallel and competing lines, and the Philadelphia and Reading Railroad Company, and the Lehigh Coal and Navigation Company, and the Lehigh and Wilkes-Barre Coal Company, and the Philadelphia and Reading Coal and Iron Company, and the Lehigh Valley Coal Company, and the Lehigh Valley Railroad Company have heretofore competed, and were at the time of the execution of the said agreements competing in the mining and production of anthracite coal, and in the transportation of the same to, and the sale of the same at, many points on their respective lines in the State of Pennsylvania, and especially at what is known as tidewater at the city of Philadelphia; and the Central Railroad Company of New Jersey, and the Lehigh Coal and Navigation Company, and the Lehigh and Wilkes-Barre Coal Company, and the Lehigh Valley Railroad Company, and the Lehigh Valley Coal Company, and the Philadelphia and Reading Railroad Company, and the Philadelphia and Reading Coal and Iron Company, have heretofore competed, and were at the time of the execution of said agreements, competing in the mining and production of anthracite coal, and the transportation of the same to, and the sale of the same at many points on their respective lines in the State of Pennsylvania, and especially at what is

known as tidewater in the harbor of New York or the waters immediately tributary to the said harbor; and the Lehigh Coal and Navigation Company, and the Lehigh and Wilkes-Barre Coal Company, and the Philadelphia and Reading Railroad Company, and the Philadelphia and Reading Coal and Iron Company, and the Lehigh Valley Railroad Company, and the Lehigh Valley Coal Company have heretofore competed, and were, at the time of the execution of said agreements, competing generally in the mining and sale of anthracite coal in the Commonwealth of Pennsylvania, and with their railroads and canals, owned leased, controlled, or operated by them were competing in the transportation thereof.

"16. That the agreements aforesaid constitute a confederation designed to raise and control the price of an article of commerce and are in effect an unlawful combination.

"And plaintiff prays in addition to his other prayers:—

"That the agreement aforesaid made between the said Lehigh Valley Coal Company and the said Philadelphia and Reading Coal and Iron Company, and the agreement aforesaid made between the Lehigh and Wilkes-Barre Coal Company and the said Philadelphia and Reading Coal and Iron Company shall be declared to be invalid and void and of no effect, and that the defendants and each of them, and their officers, agents, and employees, and each of them, shall be enjoined from further acting under the said agreements, and from carrying out the provisions thereof."

A large amount of testimony was taken by the Examiner, and is now for the consideration of the Master in determining the various questions raised by the Bill of Complaint, and the respective answers, demurrers, and plea of the defendants thereto.

That a clearer understanding may be had of the evidence as bearing upon the questions at issue, the Master deems it proper to state the facts admitted and those denied in the respective answers of the defendants.

ADMISSIONS.

By the Philadelphia and Reading Railroad Company.

That it is a corporation of the State of Pennsylvania.

That the plaintiff is a stockholder in said company.

That the answer contains a correct statement of all the railroads owned, leased or operated by it.

That it is the owner of a majority of the capital stock of the Philadelphia and Reading Coal and Iron Company, and that the Philadelphia and Reading Coal and Iron Company owns, leases, and controls large tracts of land in the State of Pennsylvania, containing anthracite coal, and that said coal and iron company operates said lands by means of collieries thereon, and that all the coal produced therefrom is transported to market over the railroads of the Philadelphia and Reading Railroad Company.

That by a certain agreement between the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company, substantially the entire product of the lands and collieries operated by the Lehigh and Wilkes-Barre Coal Company has been sold to the said Philadelphia and Reading Coal and Iron Company for the period of nine hundred and ninety-nine years.

That on the eleventh day of February, 1892, there was made between the Lehigh Valley Coal Company and the Philadelphia and Reading Coal and Iron Company an agreement that for a period of 999 years substantially the entire product of the lands and collieries operated by the Lehigh Valley Coal Company should be sold and delivered to the Philadelphia and Reading Coal and Iron Company, the same to be paid for by the said Philadelphia and Reading Coal and Iron Company at a certain rate or upon a certain basis fixed in said agreement, it being, however, expressly provided therein that coal from all of said collieries should continue to be, as it heretofore had been,

transported to market over the lines of the Lehigh Valley Railroad.

That the markets at what is known as tidewater at the city of Philadelphia, and what is known as tidewater at the harbor of New York, are the principal markets and distributing points for anthracite coal in the United States, but it avers that there are other important markets, and particularly that the city of Buffalo, N. Y., is a very important market for anthracite coal, and the principal distributing point for the Great Lakes and Western States, and is almost, if not quite, equal in importance to the city of Philadelphia as a market and distributing point.

And the Philadelphia and Reading Railroad Company further admits that by a certain indenture, agreement, lease, or contract made on February 11th, 1892, between the Lehigh Valley Railroad Company of the first part, and the Philadelphia and Reading Railroad Company of the second part, it was agreed that the railroad of the said Lehigh Valley Railroad Company between Easton and Wilkes-Barre, and also the extension thereof between Easton and Perth Amboy, N. J., and other lines between Wilkes-Barre and Buffalo, N. Y., with certain branches in New Jersey, Pennsylvania, and New York, and also the Morris and Essex Canal in New Jersey, were to be run, used, and operated by the said Philadelphia and Reading Railroad Company for a period of 999 years, together with the equipments, sidings, turnouts, tracks, bridges, stationhouses, buildings, and other property appurtenant to the said railroads and canal.

It admits that by an agreement made February 12th, 1892, between the Central Railroad Company of New Jersey and the Port Reading Railroad Company of New Jersey, the railroad and certain other property and works of the Central Railroad Company of New Jersey, situate in the State of New Jersey, were leased to the Port Reading Railroad Company for a period of 999 years, and it admits that by a certain other agreement made on the twelfth day of February, 1892, between the Central Railroad Company of New Jersey, the Port Reading Railroad

Company, and the Philadelphia and Reading Railroad Company, the Philadelphia and Reading Railroad Company covenanted and contracted to guarantee to the Central Railroad Company of New Jersey the performance and fulfillment by the Port Reading Railroad Company of the contracts, stipulations, and agreements contained in the said lease between the Central Railroad Company of New Jersey and the Port Reading Railroad Company, and that as an inducement for entering into said contract of guarantee, the Philadelphia and Reading Railroad Company was enabled to procure from the Port Reading Railroad Company by its lease of the railroad of the Central Railroad Company of New Jersey, the required terminal facilities in New York Harbor necessary for the accommodation of its present and future traffic.

By the Central Railroad Company of New Jersey.

That it is a corporation of the State of New Jersey.

That it owns, controls, and operates various lines of railroad in the State of New Jersey, and more particularly a line from the town of Phillipsburg, in the State of New Jersey, thence to the harbor of New York, and that its main line of railroad connects at Phillipsburg with the Lehigh and Susquehanna Railroad.

That under and in pursuance of articles of agreement with the Lehigh Coal and Navigation Company, dated March 31st, 1871, it entered into possession, and has since maintained and operated, the Lehigh and Susquehanna Railroad and branches, said railroad forming, with the line of said defendant, a continuous line of transportation from the Wyoming and Lehigh Valleys to tidewater upon New York Bay.

That on the twelfth day of February, 1892, it entered into an indenture of lease whereby it leased and demised all the lines of railroad owned, leased, and operated by it, including the Lehigh and Susquehanna Railroad and its branches, to the Port Reading Railroad Company, and that it entered into a tripartite agreement, dated February 12th, 1892, with the Port Reading Railroad Company and the Philadelphia and Reading Railroad Company.

And the following facts, alleged by the plaintiff, are denied by the respective defendants:—

DENIALS.

By the Philadelphia and Reading Railroad Company.

It denies that the railroads, works, and franchises of the Lehigh Valley Railroad Company leased to it and now in its control by operation of the lease of February 11th, 1892, are parallel to or competing with the railroads, works, and franchises of said defendant, and denies that the said lease is in violation of provisions of article XVII., section 4, of the Constitution of Pennsylvania.

It denies that the Lehigh and Susquehanna Railroad is a parallel or competing line to and with the railroad of the Philadelphia and Reading Railroad Company.

It denies that the agreement whereby the lease of the Lehigh and Susquehanna Railroad was assigned to the Port Reading Railroad Company was in violation of the provisions of the Constitution of Pennsylvania.

It denies that the agreement of lease between it and the Lehigh Valley Railroad Company is *ultra vires* and prejudicial to the interests of the plaintiff, and will work him irreparable injury, and that the agreement of lease between the Central Railroad Company of New Jersey and the Port Reading Railroad Company, in so far as it relates to or affects the said Lehigh and Susquehanna Railroad and its branches, is *ultra vires* and prejudicial to the interests of the plaintiff, and will work him irreparable injury.

FINDINGS OF FACT.

That the Philadelphia and Reading Railroad Company is a corporation created by and existing under the authority of an Act of the Legislature of the State of Pennsylvania, approved April 4th, 1833 (P. L., 144), entitled "An Act to authorize the Governor to incorporate the Philadelphia and

Reading Railroad Company," for the purpose of constructing and operating a line of railroad beginning at or near the borough of Reading, in Berks County, and terminating at some suitable point in or near the city of Philadelphia or on the line of the Philadelphia and Columbia, or of the Philadelphia, Germantown and Norristown Railroads.

That additional rights and powers were conferred by subsequent General Acts of Assembly and by Acts supplementary to and amendatory of the above-recited Act, and that in pursuance of the authority thereby given it, constructed and owns, leases, operates, and controls the lines of railroad set out in its answer to the bill of complaint in this suit (and to be found on pages 2, 3, and 4, answer Philadelphia and Reading Railroad Company).

That by an Act of Assembly approved May 18th, 1871, entitled "An Act to incorporate the Laurel Run Improvement Company" (the name of which corporation was afterwards changed to the Philadelphia and Reading Coal and Iron Company), it is provided that it shall be lawful for any railroad company of this State to subscribe for or purchase the stock or purchase or guarantee the bonds of the said Philadelphia and Reading Coal and Iron Company. That under and in pursuance of this authority contained in the charter of the Philadelphia and Reading Coal and Iron Company, the Philadelphia and Reading Railroad Company on or about the twentieth day of May, 1871, acquired a majority of the stock of the Philadelphia and Reading Coal and Iron Company.

That the Lehigh Coal and Navigation Company is a corporation organized and existing under an Act of the Legislature of the State of Pennsylvania, entitled "An Act to incorporate the Lehigh Coal and Navigation Company," approved February 13th, 1822 (P. L., 21), and its supplements, and in pursuance of the authority thereby given it constructed and now owns and operates a line of canal extending from Coalport to Easton, and from Easton to Bristol, and also constructed a line of railroad, known as the Lehigh and Susquehanna Railroad, extending from Phillipsburg, N. J., across the Delaware River, through the

Lehigh Valley, to a point near Wilkes-Barre, in the Wyoming Valley, State of Pennsylvania, with numerous branches, as set forth in the answer of that company in this suit (page 2), and is also the owner of coal lands in Carbon and Schuylkill Counties.

By articles of agreement, dated March 31st, 1871, the said Lehigh Coal and Navigation Company leased the said Lehigh and Susquehanna Railroad and branches to the Central Railroad Company of New Jersey.

That the Central Railroad Company of New Jersey is a corporation of the State of New Jersey, incorporated by special Act of the legislature of that State, entitled "An Act to incorporate the Somerville and Easton Railroad Company," approved February 26th, 1847. That by a supplement to the charter of the Somerville and Easton Railroad Company, approved February 22d, 1849, that company was authorized to purchase the railroad of the Elizabethtown and Somerville Railroad Company, another corporation of the State of New Jersey, incorporated by Act of February 9th, 1831, and it was provided that the two railroads should be controlled by the charter of the Somerville and Easton Railroad Company, and that the controlling company should thereafter be called the Central Railroad Company of New Jersey, and owns, controls, and operates various lines of railroad in the State of New Jersey, and more particularly a line from the town of Phillipsburg, in the State of New Jersey, thence to the harbor of New York. Its main line of railroad connects at Phillipsburg with the Lehigh and Susquehanna Railroad, and in pursuance of articles of agreement, dated March 31st, 1871, with the Lehigh Coal and Navigation Company, it entered into possession and maintains and operates the Lehigh and Susquehanna Railroad, forming with its line a continuous line of transportation from the Wyoming and Lehigh Valleys to tidewater on New York Bay.

That the Philadelphia and Reading Coal and Iron Company is a corporation incorporated by an Act approved May 8th, 1871, entitled "An Act to incorporate the Laurel Run Improvement Company" (P. L., 1871, page 215), as here-

inbefore stated. That power was conferred upon said coal and iron company to purchase, sell, transport, and mine coal, and to mine and manufacture iron, and that said company is engaged in the mining, shipping, and selling of anthracite coal.

That said coal and iron company owns and leases certain tracts of land underlaid with anthracite coal in Schuylkill, Northumberland, Columbia, and other counties in the State of Pennsylvania.

That the Philadelphia and Reading Railroad Company does not own or lease any coal land, and does not mine or sell coal.

That the coal produced from the collieries operated by the Philadelphia and Reading Coal and Iron Company is transported wholly or partly over the lines of the Philadelphia and Reading Railroad Company.

That the Philadelphia and Reading Coal and Iron Company has a capital stock of $8,000,000, divided into one hundred and sixty thousand shares of fifty dollars each. One hundred and fifty-nine thousand nine hundred and sixty shares are held in the name of the Philadelphia and Reading Railroad Company, and the remaining forty shares are held in the names of the directors.

That the Lehigh Valley Coal Company is a corporation formed by the merger and consolidation of the Luzerne Coal and Iron Company and the Green Land Company.

That the Lehigh and Wilkes-Barre Coal Company is a corporation formed by the consolidation between the Honeybrook Coal Company and the Wilkes-Barre Coal and Iron Company, made February 6th, 1874, and by virtue of this and previous consolidations it possesses all the powers of the Broad Top Mining Company, the Honeybrook Coal Company, the Consolidated Coal Company, and the Wilkes-Barre Coal and Iron Company.

That the said coal company owns and leases a number of tracts of anthracite coal lands in the Wyoming and Hazleton regions.

That no coal either from the said collieries or from any other collieries is mined or sold by the Central Railroad

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Company of New Jersey, and the Central Railroad Company of New Jersey does not own or lease any coal lands in the State of Pennsylvania.

That the coal produced by the Lehigh and Wilkes-Barre Coal Company is principally transported to market over the Lehigh and Susquehanna Railroad and the railroad of the Central Railroad Company of New Jersey; considerable amounts are, however, shipped over other railroads.

That the Lehigh and Wilkes-Barre Coal Company has an authorized capital stock of $10,000,000, of which $9,212,500 is outstanding, divided into one hundred and eighty-four thousand two hundred and fifty shares of fifty dollars each. Upon February 11th, 1892, one hundred and thirty-two thousand shares, amounting at par to $6,600,000, stood in the name of the Central Railroad Company of New Jersey, and the balance was in the hands of the public.

The Master finds the following facts (plaintiff's testimony, pages 70, 71, 72, 73, 74, 75, and 76):—

As to the distribution of anthracite coal in the United States, shipments of anthracite coal from different regions of Pennsylvania, and amounts produced in different regions and by different corporations.

Distribution of anthracite coal for years 1890 and 1891. (Partially estimated.)

Regions.	Year 1890.	Per Cent.	Year 1891.	Per Cent.
	Tons.		Tons.	
Pennsylvania, New York, and New Jersey	22,307,170	62 22	24,732,753	61 15
New England States	5,402,156	15 07	6,187,327	15.30
Western States	5,248,616	14 55	6,249,186	15 45
Southern States, including Delaware, Maryland, and District of Columbia	1,641,258	4 58	1,826,198	4 51
Pacific Coast	11,100	03	15,000	04
Dominion of Canada	1,226,839	3 42	1,393,922	3 44
Foreign Ports	48,036	13	43,950	.11
Total	35,855,175	.....	40,448,336	

The Master finds that on the eleventh day of February, 1892, an agreement was made between the Lehigh Valley Coal Company and the Philadelphia and Reading Coal and Iron Company whereby for a period of 999 years substantially the entire product of the lands and collieries operated by the Lehigh Valley Coal Company was sold to the Philadelphia and Reading Coal and Iron Company, the same to be paid for by the Philadelphia and Reading Coal and Iron Company at a certain rate or upon a certain basis fixed in said agreement, it being, however, expressly provided therein that the coal from all the collieries should continue to be, as it theretofore had been, transported to market over the lines of the Lehigh Valley Railroad Company.

That by a certain agreement between the Lehigh and Wilkes-Barre Coal Company and the Philadelphia and Reading Coal and Iron Company substantially the entire products of the lands and collieries operated by the Lehigh and Wilkes-Barre Coal Company was sold to the said Philadelphia and Reading Coal and Iron Company for a period of 999 years.

The Master comes now to the consideration and decision of the most important questions of fact raised by the bill, answers, pleadings, and evidence.

First.—Are the lines of railroad of the Philadelphia and Reading Railroad Company and the Lehigh Valley Railroad Company parallel or competing lines of railroad.

Second.—Are the leases and contracts in question calculated to stifle competition, or have they a tendency thereto, and consequently are they against public policy.

Third.—Is the making of these leases calculated injuriously to affect the public as to the commodity of coal, its price and production, and consequently against public policy.

The greater portion of the testimony taken bears on these points, and the Master will go into the questions at considerable length and detail.

The following facts are found by the Master:—

The Philadelphia and Reading Railroad Company was incorporated in 1833, with power to build a line of railroad from Reading, in Berks County, to Philadelphia; by authority subsequently conferred its lines of railroad now embrace those set out in its answer filed in this suit. It begins at Philadelphia and goes up the valley of the Schuylkill to Reading and Pottsville, thence across the mountain at Shamokin until it strikes the Susquehanna River at Sunbury, and thence along said river to Newberry Junction, in the city of Williamsport.

The Lehigh Valley Railroad Company was incorporated in 1846, with power to build a line of railroad from Easton, in Northampton County, to a point in Carbon County above the Lehigh Water Gap; by authority subsequently conferred its lines of railroad now embrace those set out in its answer filed in this suit. The main line of railroad is not constructed through any of the counties of this State through which the main line of the Reading Company is constructed; it runs through the valley of the Lehigh for a distance, then over the mountain to Wilkes-Barre, in Luzerne County, and follows northward until it strikes the north branch of the Susquehanna River at or near that city, and continues in a northerly and northwestwardly direction to Waverly on the State line between Pennsylvania and New York, forming the main trunk or line over which the bulk of its traffic is transported. For nearly the whole of this distance two counties separate, and at the point of crossing the Susquehanna four counties separate the lines. Between Wilkes-Barre and Sunbury the lines of railroad of the two companies are 65 miles apart. The Reading reaches no farther north than Williamsport, on the west branch of the Susquehanna, a point about the same distance south of the State line as Wilkes-Barre, and 65 miles due west from Wilkes-Barre, with a great mountainous district intervening.

The Reading system starting at Williamsport and runs almost due east for a distance, then turns westward for a distance, then running almost due south, reaches Sunbury; thence almost due east to Ashland; thence south to Gordon; thence south about forty-five degrees east to Port Clinton, a distance from Williamsport by this route of 123 miles, and a point 30 miles due west from Allentown, the most southern point reached by the Lehigh Valley Railroad. From Port Clinton the Reading proceeds southeastwardly to Philadelphia, and from Philadelphia to Marcus Hook on the Delaware River, near the State line between Delaware and Pennsylvania, and a total distance from Port Clinton, by this route, of 99 miles through the southern part of the State not reached at all by the Lehigh Valley Railroad or any of its branches.

The Lehigh Valley system, on the other hand, running through the State from Easton on the Delaware River southwestwardly along the Lehigh River to Bethlehem and Allentown; then turning at a right angle northward and following the winding course of the Lehigh River almost due north to Mauch Chunk and White Haven; thence over the mountain to Wilkes-Barre, a distance by rail from Allentown of 82 miles, and a point due east of and 65 miles distant from Williamsport, the most northern point reached by the Reading.

It will thus be seen that the only section of the State entered by the lines of both the Reading and the Lehigh Valley is that section which has for its western boundary a line running from Port Clinton to Williamsport of the distance by rail of 123 miles; for its eastern boundary a line running from Allentown to Wilkes-Barre of the distance by rail of 82 miles; for its northern boundary an imaginary line running from Wilkes-Barre due west to Williamsport of the distance of 65 miles; and for its southern boundary an imaginary line from Allentown due west to Port Clinton, a distance of 30 miles. And with the Reading system forming the western line of this section, the Lehigh Valley system the eastern line, the most southern point reached by the Lehigh Valley the south-

ern line, and the most northern point reached by the Reading system the northern line.

It will therefore be observed that these two systems of railroad are but 30 miles distant from each other between Port Clinton and Allentown, the southern line of this section, whilst at a distance of not over 50 miles by a direct line due north of Allentown, that is, between Wilkes-Barre and Williamsport, the northern line of this section, these two systems of railroad are 65 miles distant from each other; or, to state it differently, for each mile of this section traveled by the Reading from Port Clinton north it travels over one-half mile farther west from the Lehigh Valley Railroad, thus showing that the general trend of the two railroads is vastly different in this, the only section of the State entered by both.

Certainly these two systems of railroad have all the elements about them of difference as respects geographical location, terminals reached, and territory traversed.

It is in evidence that the North Pennsylvania branch of the Reading runs from Philadelphia to Bethlehem, terminating there, the Lehigh Valley Railroad also passes through Bethlehem with its main line, the Lebanon Valley branch of the Reading reaching East Penn Junction near Allentown, and the main line of the Lehigh Valley running through the city of Allentown, the Reading Railroad having no line of railroad to connect the two points, East Penn Junction and Bethlehem, the North Penn branch running to Philadelphia from Bethlehem, in a directly opposite direction from that followed by the main line of the Lehigh Valley Railroad, and at East Penn Junction the Lebanon Valley branch running at almost right angles from the direction pursued by the railroad of the Lehigh Valley Railroad Company.

Three points, Bethlehem, East Penn Junction, and Catasauqua, are the only points on the main line of the Lehigh Valley Railroad which are reached by the Reading system of railroads, and these points are only reached by branch lines extending from the main line of that system of railroad.

After a very careful consideration of the testimony bear-

ing upon this branch of the case, the Master finds that the lines of railroad of the Lehigh Valley Railroad Company and the lines of railroad of the Philadelphia and Reading Railroad Company are not parallel, and that from the testimony adduced no evidence is shown to sustain the plaintiff's allegation that they are competing lines of railroad within the meaning of the Constitution prohibition.

The Master is of the opinion, and so finds as a fact, that even although these two railroads may connect and transport freights and passengers between the local points on the several branches and spurs referred to by the witnesses in their testimony, and although there may be some incidental competition between the two roads at said points, it does not constitute the lines of railroad of the said two companies competing lines within the meaning and intent of article XVII., section 4, of the Constitution, which, in the opinion of the Master, was designed to prevent the consolidation of corporations whose lines, as a whole, formed competing systems; and he therefore finds as a fact that the systems of railroads of the Lehigh Valley Railroad Company and of the Philadelphia and Reading Railroad Company are not parallel or competing lines.

The two other questions of fact may be considered together.

It is charged by the plaintiff "that the agreements of leases aforesaid consitute a confederation designed to raise and control the price of an article of commerce, and are in effect an unlawful combination."

The article of commerce referred to is, as may be gathered from other parts of the plaintiff's bill, anthracite coal.

The Master finds as a further fact that the making of the said agreements of lease did not "constitute a confederation designed to raise and control the price of an article of commerce, and are not in effect an unlawful combination."

May this result be apprehended from the agreements above referred to, by which the coal mined by the Lehigh Valley Coal Company and the Lehigh and Wilkes-Barre Coal Company is sold to the Philadelphia and Reading Coal and Iron Company? This can only be determined by the evidence in the case.

It was testified, and upon this question there is no dispute, and is found as a fact by the Master, that the total area of the anthracite coal fields in Pennsylvania is between four hundred and ninety and five hundred quare miles, divided into three fields—the northern, middle, and southern coal fields. In these three coal fields there are three hundred and nine collieries in operation, divided as follows: Northern coal field, one hundred and eighty-six collieries; middle coal field, seventy-nine collieries; and southern coal field, forty-four collieries. The total amount of anthracite coal mined from the collieries during the year 1891 was forty million four hundred and forty-eight thousand three hundred and thirty-six tons.

From the statement included in stipulation admitted, showing production of anthracite coal in Pennsylvania for the years 1890 and 1891 (plaintiff's testimony, pages 72-75), the Philadelphia and Reading Coal and Iron Company mined in the year 1891 eight million two hundred and three thousand four hundred and sixty-five tons of anthracite coal, the Lehigh Valley Coal Company one million three hundred and sixty-nine thousand and eighty-five, and the Lehigh and Wilkes-Barre Coal Company two million six hundred and twenty-six thousand four hundred and ninety-seven, or a total for the three companies of twelve million one hundred and ninety-nine thousand and forty-seven tons. The total tons of anthracite coal mined by all operators in Pennsylvania for the year 1891 was (plaintiff's testimony, page 40) forty million four hundred and forty-eight thousand three hundred and thirty-six, so that from these figures the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, and the Lehigh and Wilkes-Barre Coal Company mined but thirty and fifteen one-hundredths per cent. of the total output.

It thus appears from the testimony that these coal companies control but thirty and fifteen one-hundredths per cent. of the entire anthracite output, and that it would be impossible for them in any way to control the coal trade or the market price of coal. Besides, the evidence shows that the railroad and transportation companies have nothing

to do with the fixing the price of coal, but that this is wholly controlled by the miners and producers of coal, and that in the business of mining coal in the anthracite coal regions, in addition to the three coal companies above mentioned, there are no less than one hundred and thirty independent operators, as appears by the evidence above quoted, each one of whom has a voice in the question of the price of coal.

CONCLUSIONS OF LAW.

The questions of law raised by the pleadings and evidence, and which require the consideration of the Master, resolve themselves into four:—

1. Are the provisions of Article XVII., section 4, of the Constitution of 1874, applicable to the lease of February 12th, 1892, of the Central Railroad Company of New Jersey to the Port Reading Railroad Company.

3. Irrespective of the constitutional prohibition, are the leases void at common law as controlling the market price of coal or having a tendency thereto, and thereby causing injury to the public.

4. Apart from the constitutional prohibition, are the leases void at common law as controlling the market price of coal or having a tendency thereto, and thereby causing an injury to the public.

Article XVII., section 4, of the Constitution of Pennsylvania provides:—

"Sec. 4. No railroad, canal, or other corporation, or the lessees, purchasers, or managers of any railroad or canal corporation, shall consolidate the stock, property, or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad or canal corporation owning or having under its control a parallel or competing line, nor shall any officer of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel or competing line; and the

question whether railroads or canals are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues."

Whether railroad lines are parallel is a fact of which the courts will take judicial notice.

The Master is of the opinion that the Constitutional provision was only intended to apply to those railroads whose lines as an entirety were competitive, and was not designed to prevent the consolidation of through lines merely for the reason that there were comprised in such consolidation spurs or branches to the main line of either consolidating company, which might be regarded as competing with one another, whereby incidental competition might be created.

As to the third question. The next question of law raised by the pleadings and evidence is whether "Irrespective of the constitutional prohibition are the leases void at common law and calculated to repress competition and thereby injuriously affect the public."

The general rule as deduced from the decided cases is where the tendency of an agreement is to create a monopoly and destroy competition in trade, courts will not on grounds of public policy sustain such an agreement.

Applying the rule laid down in these authorities to the present case, what is the internal evidence as to the character of the leases and contracts under consideration?

If the leases are in restraint of healthy competition, this must follow either from their terms or from the circumstances attendant upon the operation of the roads affected. If by the very terms and spirit of the leases the business of each line is to be competitively fostered it can hardly be argued (at least until the event has so proved) that agreements entered into with this express intention are to be carried out with the directly opposite effect.

Referring, then, to the lease of the Central Railroad of New Jersey to the Port Reading Railroad Company, we find the following provision:—

"*Eleventh.*—That the Port Reading Railroad Company shall not and will not divert or permit, or cause to be di-

verted, from the transportation lines or terminals comprising the Central system, its present traffic or any traffic which would naturally go to or towards its destination by or over the said system or any part thereof; and covenants and agrees that the tonnage mileage of all classes of traffic over the rail and water lines of the Central system shall be fostered and increased (by affording proper facilities and the making of reasonable and proper charges for transportation and otherwise), in such natural and proper future growth as shall be due to the location and resources of the said system. And the Port Reading Company shall at all times and from time to time during the term, give and extend to the individual operators and miners of coal along the lines of the Central Company, all due facilities for the shipping and marketing of the coal mined by the said operators and miners over the Central system and its terminals, and the Port Reading Company shall not do anything in discrimination against the said operators and miners."

It appears that the surplus rental to be paid to each company under these leases, over and above the guaranteed rental, is expressly dependent on the earnings made on the respective lines, thus showing plainly that whatever elements of traffic or business existed or could be developed on each were, by the very terms of the leases, to be fostered and encouraged, so that if the elements of competition existed between these lines, there was nothing in the leases tending to its suppression or extinction; but the leases, by their very terms, provide for the fostering and increase of all classes of traffic over each line.

This presents a different question from that which would be presented by leases in which the lessee would be bound to pay only a fixed rental, to be raised by the lessee in such way as might be deemed most convenient to the lessee, and where the lessee would be at liberty to manage the business over the leased lines as he might think best, without any restriction. In such case, were two parallel or competing lines leased to one lessee, the result might be a stifling of competitive traffic; but in the present instance,

even if it were for the sake of argument admitted as a fact that the lines in question bore to each other the relation of parallel or competing lines, it is manifest that, as competition on the respective lines not only cannot be interfered with, but interference therewith is made, by the terms of the leases themselves, a cause of forfeiture, the leases are not calculated to repress competition, and thereby injuriously affect the public, and are not therefore void at common law.

As the evidence shows that these leases were made for a just and honest purpose and were a reasonable business arrangement to protect the legitimate interests of the parties to the leases, and do not cause unreasonable high charges or violate any duty which the companies owe to the public, and no special injury to the public is shown, they come within the operation of the rule as laid down by the authorities just cited, and the leases will be held valid, and not in contravention of public policy.

As to the fourth question, apart from the constitutional prohibition, are the leases void at common law as controlling the market price of coal, and thereby causing an injury to the public?

As to the agreements between the coal companies, the Master has found that substantially the entire product of the lands and collieries operated by the Lehigh and Wilkes-Barre Coal Company and by the Lehigh Valley Coal Company was sold to the Philadelphia and Reading Coal and Iron Company.

The law is well settled that all contracts which in their objects, operations, and tendencies stifle competition in the market value of necessary commodities are in contravention of public policy, and incapable of conferring upon the parties thereto any rights which are enforceable in the courts; in other words, such contracts are void.

But while the general rule, as deduced from the authorities, is as I have stated it, the Master is of the opinion that the coal agreements are removed from its operation.

The Master is brought to this conclusion upon the testimony offered and the facts shown and found in the case.

In the anthracite coal region in this State, with an area of between four hundred and ninety and five hundred square miles, with three hundred and nine collieries in operation, operated by one hundred and thirty-three distinct and separate parties, with a total tonnage output for the year 1891 of forty million four hundred and forty-eight thousand three hundred and thirty-six tons, but twelve million one hundred and ninety-nine thousand and forty-seven tons were mined by the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, and the Lehigh and Wilkes-Barre Coal Company, being only about thirty and fifteen one-hundredths per cent. of the total output. Moreover, the evidence shows that the price of coal is fixed by the miners and producers of coal, and in the business of mining coal in the anthracite coal region, in addition to the three coal companies above mentioned, there are no less than one hundred and thirty independent operators, each one of whom has a voice in fixing the price of coal. The Master concludes that by reason of the fact that the parties to these coal agreements would be able to control but a limited proportion of the coal production, and would not have a controlling voice in the regulation of the price of coal, there is nothing in the agreement which could have a tendency to create a monopoly or control the market price of coal in such manner that the public would be injuriously affected thereby, and that the agreements in question do not contravene public policy in this respect.

The demurrer of the Philadelphia and Reading Coal and Iron Company is sustained by the Master, and the bill will be dismissed as to this defendant.

The demurrer of the Lehigh Valley Coal Company is sustained by the Master, and the bill will be dismissed as to this defendant.

There being no countervailing proof to overcome the facts set forth in the plea of the Lehigh and Wilkes-Barre Coal Company, the plea in the opinion of the Master is true and sufficient in point of fact and law, and the bill will be dismissed as to this defendant.

APPEARANCE DOCKET.

Supreme Court of Pennsylvania, Eastern District.

Among the Records and Proceedings of the Supreme Court of Pennsylvania in and for the Eastern District, *inter alia*, the following is thus contained:—

Docket Entries.

January Term, 1893. No. 347.

Henry C. McCormick.
Seth T. McCormick.
John B. Stanchfield.

347

Appeal of Mathias H. Arnot from the decree In Equity.

No. 1 June Term 1892. Wherein the said appellant was plaintiff and The Philadelphia and Reading Railroad Company were defendants.

Certiorari to the Court of Common Pleas of the County of Lycoming.

Retble the Second Monday of March 1893.

Exit February 15, 1893.

March 13, 1893. Continued to be heard at Harrisburg at next meeting of court to be held there

Per Curiam.

March 13, 1893. Record returned and filed.

Eo die. Assignments of Error filed.

April 20, 1893. Transferred to Middle District for hearing.

May 31, 1893. Stipulation for amendment of record filed.

June 1, 1893. Argued in Middle District.

December 30, 1893. And now to wit December 30, 1893 the Justices before whom this case was argued not being agreed upon the matters therein raised, a reargument is ordered to be held before the full court.

By the Court.

March 12, 1894. Motion for leave to discontinue and dismiss the appeal filed on motion of Henry C. McCormick, Esq. Atty for Appellant.

Eo die. Leave granted and counsel directed to amend motion, on payment of costs.

Per Curiam.

STATE OF PENNSYLVANIA, }
EASTERN DISTRICT. } *ss.*

I, Lewis C Greene, Deputy Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the above and foregoing is a true copy of the Docket Entries in the above entitled cause, so full and entire as appears of record in said court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at Philadelphia this 1st day of August, A. D. 1907.

LEWIS C. GREENE,
Deputy Prothonotary.

[SEAL]

Among the Records and Proceedings enrolled in the Court of Common Pleas in and for the County of Lycoming in the Commonwealth of Pennsylvania to No. 1, June Term, 1892, in Equity, is contained *inter alia* the following:—

Matthias H. Arnot, Plaintiff,

vs.

The Philadelphia and Reading Railroad Company, The Lehigh Valley Railroad Company, The Lehigh Coal and Navigation Company, The Central Railroad Company of New Jersey and the Port Reading Railroad Company.

McCormick for Plaintiff.

Wolverton, Rhown, Herring, Reading, Jr., Gowen, Omsted, Reading, Dickson, Dale and Reading for Defendants.

June 26" 1893 opinion of the Court filed. And now to wit: January 26" 1893, this case came on to be heard upon the Master's report and the exceptions thereto, and having been argued by counsel for the respective parties, thereupon, upon due consideration thereof, it is ordered, adjudged and

decreed that the exceptions be dismissed and the report confirmed and that the bill of the Plaintiff be dismissed with costs.

By THE COURT,

JOHN J. METZGER,
P. J.

STATE OF PENNSYLVANIA, }
LYCOMING COUNTY. } *ss.*

Certified from the Records of the Court of Common Pleas of Lycoming County, under my hand and seal of said Court, at the city of Williamsport, this 31st. day of January 1910.

HARRY S. MEYER,
Prothonotary.

[SEAL]

Mr. Reynolds offered in evidence also statement prepared by Samuel Dickson respecting the early attempts to build a line of railway between Philadelphia and Bound Brook to form part of a through line between Philadelphia and New York in competition with the Pennsylvania Railroad.

Government's counsel objects to the statement offered, on the ground of incompetency, irrelevancy and immateriality, and notes a further special objection to so much of the statement as includes opinions, beliefs and surmises as distinguished from historical facts as to the charters.

Government's counsel also give notice of an application to strike the statement from the record.

The statement is as follows:—

"In 1869 an attempt was made to build an independent and competing line of railroad between the City of Philadelphia and Bound Brook.

"The charter of Attleborough R. R. Co., incorporated under the Act of April 2, 1860, was secured. This charter authorized the construction of the railroad from Attleborough to any point on the Delaware River, and also to con-

nect with railroads in the Counties of Bucks and Philadelphia. The name of the Company was changed to National Railway Co., and a second company was organized under the General Railroad Law under the name of the Yardleyville & Middletown R. R. Co., with authority to build from a point near Yardleyville to the middle of the Delaware River. This was merged into National Railway Company and the consolidated company was believed to have authority to build from the City of Philadelphia to a point in the middle of the Delaware River at or near Yardleyville.

"In New Jersey a special charter was obtained to incorporate a railroad under the name of Stanhope R. R. Co., to construct a railroad from a point on Wallkill Mountain to a point on Lake Hopatcong, and to merge with other companies without restriction as to gauge. Several other charters were acquired in the State of New Jersey, including the one of a company incorporated entitled the Narrow Gauge Railway Co., which was authorized to construct a narrow gauge railroad from any factory to a point of connection with the Central R. R. of N. J. A consolidation was then effected between the Stanhope R. R. Co., the Narrow Gauge Railway Co., and other railroad companies, and an agreement entered into for the construction of a railroad from a point in the middle of the Delaware River to Bound Brook. The National Railway Co. of Pennsylvania then took a lease of the Stanhope R. R. Co., and it was advised by counsel in Pennsylvania and in New Jersey that it then had the power under its own charter and the charter of the Stanhope R. R. Co., to build and construct a railroad from Philadelphia to Bound Brook to a point of connection with the Central R. R. Co. of N. J.

"These agreements were made and executed in June, 1872, and the work of construction was begun in New Jersey, and large expenditures were made, and it was believed that it would be possible to build a railroad which would be an independent and competing line between Philadelphia and New York.

"In August, 1872, a Bill in Equity was filed by some of the stockholders in the National Railway Co., alleging that

their subscriptions had been obtained by misrepresentation, that the Pennsylvania charter had lapsed and did not authorize the construction of the road from the point of Philadelphia to the Delaware; that the charter of the Stanhope R. R. Co., had been obtained by fraud, and that the Company had no power to construct the road from the Delaware to Bound Brook. The Attorney General of Pennsylvania was also induced to file a writ of *quo warranto* to forfeit the charter of the Attleborough R. R. Co., and upon the coming on of the motion for an injunction, in order to expedite the final decision to the case, it was agreed that a decree *pro forma* should be entered, so that appeal could be taken to the Supreme Court. The defendant filed affidavits alleging that the plaintiffs were not acting in good faith for the protection of their own individual interests, but at the instance of the Pennsylvania R. R. Co. to defeat the construction of a competing line. In New Jersey an appeal was filed by the united companies and Pennsylvania R. R. Co., against the National Railway Co., the Stanhope R. R. Co. and others, asking to enjoin the construction of the railroad in New Jersey upon the ground that it would interfere with their right of monopoly. This contention was sustained and an opinion was delivered by the Vice-Chancellor which was reported in 23 N. J. Equity, 441. This decision aroused much feeling throughout the State of New Jersey, led to the passage of the Free Railroad Law of April, 1873, and immediately thereafter a company was organized under that Act to construct a railroad from the Delaware to Bound Brook.

"In Pennsylvania, in order to avoid delays of litigation, a company was organized under the General Railroad Law in 1868, which gave the unquestioned power to build between the proposed termini, and in order to obviate the objection that there could be no lease or merger of unfinished roads, the charter of the Excelsior Enterprise Co., having the same privileges and franchise as the Pennsylvania Co., was procured and the name changed to the National Company, which thereupon

became the owner of the capital stock of the Pennsylvania and New Jersey companies. Before these arrangements could be completed, the stringency of the money market, which culminated in the bankruptcy of Jay Cooke & Co., in September, 1873, made it impossible for the bankrupt company to sell the bonds, and the work of construction had to be abandoned.

"Subsequently, in the year 1874, the North Pennsylvania R. R. Co., having the authority, under its branching power, to build a branch from Jenkintown to the middle of the river, purchased the assets of the National Company, including the work of construction on the line of the Bound Brook road in New Jersey, and a line of railroad between Jenkintown and Bound Brook was thereupon completed and open for travel on the first day of May, 1876.

"Subsequently, in the year 1879, the Philadelphia & Reading R. R. Co. leased the North Pennsylvania R. R. Co., and thus acquired control of the line from Philadelphia to Bound Brook."

Mr Reynolds also offered in evidence Act of Pennsylvania of April 7th, 1870, Pamphlet Laws of 1870, page 1025, creating the Pennsylvania Company.

Also Act of Pennsylvania May 24th, 1871, Pamphlet Laws, 1089, creating the Excelsior Enterprise Company.

Also Act of Pennsylvania of April 15th, 1869, Pamphlet Laws of 1869, page 31.

Also Act approved the eighteenth day of February, A. D. one thousand eight hundred and seventy-one, being a supplement to an Act entitled An Act to Incorporate the Pennsylvania Company, approved the seventh day of April, A. D. 1870.

Mr. Reynolds also offered in evidence certificate of the Secretary of the Commonwealth of Pennsylvania of the change of corporate title changing the name of the Excelsior Enterprise Company to the name, style and title of the National Company, of March 31st, 1873.

It is understood that either party may quote from any portion of the Acts offered.

Mr. Drinker offered the following evidence on behalf of the Lehigh Coal and Navigation Company:—

It is understood that the Government reserves all objections as to the relevancy and materiality of the evidence to be offered.

Government counsel also reserves the right to quote from any of the same sources from which extracts are taken.

A legal history of the formation and organization and operation of the Lehigh Coal and Navigation Company, from its organization, and some years prior thereto, down to the year 1868, as follows:—

The Lehigh Coal and Navigation Company was incorporated by Special Act of the Legislature dated February 13th, 1822, P. L., 21. In order to understand the purpose for which it was formed, it is necessary, however, to go back to a period thirty years before its organization.

In the year 1792 an association was formed under the title of the Lehigh Coal Mine Company, which purchased from Jacob Weiss a tract of land at Summit Hill, and afterwards took up under warrants from the Commonwealth about 10,000 acres of land, embracing more than three-fourths of the coal lands now owned by the Lehigh Coal and Navigation Company.

The Coal Mine Company proceeded to open its mines and make an appropriation of £10 (later increased to £20) to construct a road from its mines to the landings on the Lehigh River, a distance of nine miles.

At this time the Lehigh River was wholly unimproved, and for navigation purposes, except in times of extraordinary flood, was entirely impracticable. The Coal Mine Company, therefore soon found that it was impossible to get its coal to market. Endeavors were made to improve the river, and laws were passed by the Commonwealth to this end, but without accomplishing anything. The last of six of these laws was the Act of February

27th, 1798 (recorded in Law Book No. 6, page 223). Incorporated in this Act was the privilege of raising money by lottery in order to improve the river. It contained also a limitation by which the improvement must be made within twenty years or it would expire.

During this twenty-year period the Lehigh Coal Mine Company made several leases, and under a lease in 1813, five ark loads of coal were loaded from the landing at Mauch Chunk, two of which reached Philadelphia, the other three having been wrecked. The company paid $4 per ton to a contractor for hauling the coal from the mines to the landing. The coal which arrived at Philadelphia was purchased at $21 per ton by Josiah White and Erskine Hazard who were then manufacturing wire at the Falls of the Schuylkill, but even at this price the lessees were not recompensed for their outlay and expenses and consequently decided to abandon the business.

In December, 1817, Messrs. White and Hazard, desiring to have anthracite coal for their works, and finding that they could not obtain it as cheaply from the Schuylkill Region as they were led to believe it could be procured from the Lehigh, determined that White should visit the Lehigh mines and river and obtain the necessary information on the subject. In this visit he was joined by George F. A. Hauto. On their return with a favorable report, it was ascertained that the lease on the mining property was forfeited by nonuser, and that the Act of 1798 had just expired by limitation. The Lehigh Coal Mine Company, thereupon, being entirely disheartened, executed a lease to Messrs. White, Hazard and Hauto for twenty years on their whole property, on the condition that after three years the lessees should deliver at least 40,000 bushels of coal annually in Philadelphia and outlying districts, and should pay upon demand one ear of corn as an annual rent for the property.

Having obtained a lease of the coal lands, Messrs. White, Hazard and Hauto sought for some means to get the coal to market, and the next Spring, on the 20th of March, they obtained a special Act of the Legislature authorizing them

to improve the navigation of the River Lehigh (7 Sm. L., 86.)

In April, 1818, White and Hazard themselves ran a level from Stoddartsville, at the head of the Lehigh River, down to Easton, sleeping in the woods.

Having obtained the Act of 1818, the lease on the coal lands, and the necessary information respecting the mines and the navigation of the river, the next step of the pioneers was to raise the necessary capital to carry on their work. In this they found the greatest difficulty. The repeated failure of their predecessors to improve the river, combined with the sceptical attitude with which anthracite coal was generally regarded as a fuel, made the obtaining of subscriptions very tedious. Finally two of the few subscribers, David Sellers and Samuel Gibson, took a trip up the Lehigh. A summary of their report is thus given by Josiah White in his journal:—

"They reported the Coal Mines inexhaustible but that the country was so Ruff between the River and the Mines, *that they found it an casement to Run over Stumps to avoid Stones.*

"That their Estimate of cost of improving the River was within our Estimate.

"This Report so completely alarmed the first subscribers, that we gave up their Subscription, & Nathn Sellers Recommended that we separate the Navigation from the Coal & make 2 Separate Cos, which altho contrary to our notions of Right we Submitted to, for the sake of starting the work under his Recommendation, for he felt a freedom to Recommend the Navigation on our plan."

Accordingly proposals were issued for subscriptions to two companies, the one called the Lehigh Navigation Company, and the other the Lehigh Coal Company. These two were to operate in conjunction with one another, the Coal Company to mine the coal, and the Navigation Company to transport it down the river Lehigh to Easton, and then down the Delaware to Philadelphia. They were to be consolidated at the earliest opportunity.

As soon as sufficient subscriptions had been obtained,

White, Hauto and Hazard engaged 200 to 300 hands and proceeded with the improvement of the river, which they had already begun in the Spring.

They also built a road from the mines at Summit to Mauch Chunk. This road White himself laid out with a borrowed level and of it he says:—

"We proceeded to make our Turnpike of 8½ miles as proposed, with a constant decent of 75 ft. to 100 ft. to the mile to within 4 miles of M. C. & then 50 to 75 ft. a mile until the level struck Mauch Chunk Creek & then down the bottom of the valley, about 100 or 150 ft. a mile to the landing at Mauch Chunk. No doubt this was the first uninterrupted descending grade of 8 miles in America if not in world, embracing the principle of never Rising."

This road was intended for a railroad as soon as the business would warrant the expense of placing rails upon it.

It had originally been intended that the navigation of the river should be effected by means of small wing dams and channel walls which would concentrate the water in a narrow channel at points where the river was shallow, and thus give sufficient depth for the passage of boats. Early in 1819, however, it was found that this method would not give the 18 inch depth for a 20 foot width required by the Act of 1818, and White thereupon devised a system of "artificial freshets" to enable the boats to float down.

"I devoted myself," he says, "for several weeks, especially to form a plan of a Sluice that would answer us, to be cheap made, & be safe in all stages of the water, & in which I providentially Succeeded in producing the Lock or Sluice, called the '*Bear Trap*,' a name the Workmen gave it while we were experimenting with it, on M Chunk Creek above the head of lower Broadway, to elude the enquiry of persons, who teased them with wanting to know what we were making &c. &c.

"We put up about 12 of these Locks & Dams this year, & completely prooved them, so as to determine they would answer our purpose. I took out a Patent for this Lock 12 mo 1819."

He thus describes the method of operating these locks:

"As the artificial freshet Navign is now abandoned & substituted by a Canal & Slackwater, it is due to give the character of that Navign.

"The River had 12 small dams & Bear trap Locks of 3 to 6 ft. high from M Chunk to the Lehigh Water Gap, say 11 miles & 9 miles below at the Slates a large dam & Bear trap lock 130 ft long 30 ft wide, made for a lift lock & 17 miles below the Slates another Dam 6 or 7 ft high & accendg lock like that at the Slates.

"1 man got on the front Coal ark at M Chunk & Rode down to the 2nd Lock then got off & had time to let down the gate (take ½ to 1 minute) & then got on the forward boat again, by this time there would be sufficient water, passed through the Lock & the water above beginning to fall, they then passed through to the next Lock when the same Lock tender got off and let the lock down as before & then got on the ark again &c &c down through the 12 locks to the Gap, & let this last Remain down untill the pond Run down & then walked back in the afternoon putting up all the Locks, so as to hold water for the freshet the next day.

"The operation of this was that the water in one pond made sufficient for to fill the channel to the other & so on to the Gap, & the accumulation of the 12 ponds here carried the fleet of 6 to 9 Boats or nests of arks down to the Slates, the pond here being 1 mile long, which together with the water from the 12 locks above carried the arks &c down to the 37 mile dam 17 miles below the slates & this would take these to & down the Delaware, & give 4 inches fresh on the Delaware.

"We have sent safely as many sections, as would make 190 to 200 ft in length. The average Boat say 140 or 150 ft. long, 16 ft wide & sunk 14 to 16 in sections 16 to 25 ft long each & the whole Boat under charge of 2 front & hind ore & 3 Hands carrd 70 or 120 tons.

"In the 3 last years of using these boats we averaged make in the whole of each season of 10 or 12 consecutive miles of these boats, all made entirely from the *Tree* every *year*, carrg about 40,000 tons of coal a year.

"Our Lumber however held out as we had contemplated until we finished the *accending* navign a Sett of hands would make a single section in 3-4 hour. & 7 or 8 Boats of 5 to 7 Secs as was a days work. the boards was plained by water & Plank jointed by water at Laurel Run & by crank & man power at M. Chunk. the plank corked by 1-2 in sqr White Pine Strips put corner ways into the grooves to fit in the plank & the balance of corking was large Rushes broaght from below Phila. & swengled tow for which we gave 1 ct. a lb.

"The Boats were knocked to ps in Phila & Lumber. sold. & the Iron sent back by team. costing us $15 to $17 1-2 freight. a ton 80 miles. this for the 80 miles is say *10 cents a Ton a mile.* Our Coal is now sent MC to Bristol 106 miles Includg toll & Freight for 1.24 cents a ton equal to 1 17-100 cents a ton a mile. Cist & Minor in 1816 pd $4 a ton Hallg Coal to M. C. we now pay by Back track 15 cts a ton.

"The Boston took their boats to Phila & Walked back mostly at first of latter years, they hired teams on the way to bring them back faster."

Meanwhile the managers had bought the coal lands and also timber lands at the head of the river so as to provide lumber for the rafts. The greatest difficulty was experienced in getting the lumber down to Mauch Chunk. White thus describes the conditions:—

"Inasmuch as by our decending navigation we got but one trip out of our boats when they where knocked up & converted again into Lumber after discharging their Coal in Philada. we found it was impossible to continue our Coal business even in the then small way. unless we. cleard out and contracted the channel as high up the River as the Pine Forrests, which was about 14 miles above Nesquhoning Creek (16 miles above M Chunk)

"This however was no small job for it was to be effected over Rapids that had formerly been abandoned. as a work impossible to accomplish; in this 14 miles there was a fall or Rise in the River exceeding 300 ft. & the Rocky bottom was peculiarly hard & difficult. & so for-

bidding was the shore that Horses had never been got down to this section of the River except in *two places.* & to supply our Hands in the channel, it was necessary to begin at the upr end and work downwards & send provisions & supplies to our Hands by a Road about 18 miles Round to the mouth of Laurel Run & then put it on a box boat & go down the chans to the work men.

"No Raft had ever before our channel was done Passed down the River from above the Nesquhoning, & From Nespuhog down before our channel was made it was only navigable for rafts, in time of High freshets.

"The Managers attempted to get plank for their boats down from the Forrest to M Chunk before the channels were made but the tryal prooved that the plank wore out or got broke against the Rocks before they got down to M. Chunk.

"Their next Resort was to throw in saw Logs *singly* in the Forrest, drive them down in high freshet by pushg them off the Rocks when they got fast, but it frequently happened when they got a large quantity within a small distance of M Chunk, a high freshet would occur & sweep the greater part down the River beyond our control, in fact we lost so much Logs & Lumber by freshets that, when the Co. were about settling Damages for their Canal The owners of places where this stuff of the Co. drifted demanded Damaged 4 fold the value of their Land because of the value of our drift stuff & on a Reference to one of those cases, our men swore that the Plaintiff in question had supported his whole family by the Drift lumber on his land (about 1 or 2 acres) & had money over their support."

At the close of the season of 1819 the Managers had proved to their satisfaction that the improvement of the navigation by artificial freshets was feasible, but although twelve dams had been constructed these had not all been covered in and sufficiently protected against ice freshets and in the Winter six of them were carried away.

By this time, also, the whole of the capital of $105,000 had been disbursed but White himself, being convinced of

the ultimate success of the enterprise, paid the hands during the Winter out of his own pocket. He continues:—

"As I have mentioned we had formed 2, Companies, viz a Navigation & a Coal Co. & both Co. censured us their Managers for spending their Money Wastefully. The Navigation Co. charged us for spending it wastefully by spending it *so fast*, by hurrying it, to accommodate the Coal Co. And the latter Co. complained because the Navigation was not then entirely finished, so as to send down their coal &c. &c.

"Most of the Stockholders in one were Stockholders of the other Co. & we found they took sides, with the stock their interest preponderated, if it was only 200 or 300$.

"One influential Stockholder said he would be one of 10 to Subscribe $10,000 to finish the work & Proove the value of the Coal &c *if the Co. would mortgage, to them the whole of their property*. But few joined him & not eno.

"It was finally concluded to amalgamate the 2 Cos. which was done 21 April 1820, on the express condition that $20,000 of the Stock should be subscribed to & the new Stock called 'the Lehigh Navigation & Coal Co.'

"This small increase of stock was with Difficulty obtained & not until $12,000, of it was taken by White & Hazard. More than $6000 of it I had advanced to carry us through the winter.

"This year, 1820, the Dams & Locks were Repaired & the first anthracite Coal sent to market by *Our Artificial Navigation*, & the whole quantity sent this year was 364 tons & this proved more than eno for family supply in Phila. & the Co. was in debt to the Rollen Mills &c for taking this Stock alltho the *Co. never asked more than $8. 50 a gross ton* whereas the previous Co. to ours asked as much as they could get for it, & they got $21. a ton, the consequence was the Public would not put up furnaces to burn it at such extravigant price, as $21. This seemed to confirm the doubtfull in the beginning, who admitted we *had plenty* of Coal, but that the prejudice of the Community, would be against its family use, & which apprehension seemed now to be confirmed."

During 1821 with the greatest difficulty more capital was raised and in spite of a break in the principal dam, 1073 tons of coal were sent to market. Still more money was needed. The company being up to this time unincorporated the stockholders became uneasy as to their personal liabilities and refused to subscribe further funds. Application was therefore, made to the Legislature, and on February 13th, 1822, the present act of incorporation was granted, the capital of the company being originally fixed at $1,000,000.

In the years 1822 to 1823 the descending navigation on the Lehigh was completed from Mauch Chunk down and a channel was made up to the Pine Forest. During these years the company also contributed upwards of $4000 to improve the channel of the Delaware.

In the year 1823, 5823 tons of coal were sent to market and about 1000 tons of this were left unsold in the following Spring. The managers in Philadelphia reported that it was not possible to dispose of more than 2000 to 3000 tons during the following season. After 1824, however, the public began to appreciate the value of anthracite and in 1825 the company marketed 28,393 tons. In this year also 7143 tons came down the Schuylkill.

In 1827 rails were laid on the road previously built from Summit to Mauch Chunk, this being the first railroad exceeding a mile in length ever built in Pennsylvania. The cars were drawn up grade by mules, who rode down in stalls at the back of the train, which consisted of fourteen cars of two tons each. The railroad was thus operated until 1845 when the Back Track (the present Switch Back Railroad) was completed. This was used until the opening of the Nesquhoning Tunnel in May, 1871.

In 1827 also the company began the construction of slack-water navigation completing the canal up as far as Mauch Chunk by July 1829. By June, 1838, this slack-water canal had been completed up as far as Wright's Creek, and the descending navigation extended to Stoddartsville.

By the Act of March 13th 1837, P. L., 53, the Legislature authorized the company to construct a railroad to con-

nect the north branch continuation of the Pennsylvania Canal at Wilkes-Barre with the slack water navigation of the Lehigh over the divide above Stoddartsville, and repealed so much of the Act of 1822 as required or provided for the completion of slack water navigation between Wright's Creek near White Haven, and Stoddartsville. This work together with the entire slack water navigation required, was completed by March 19th, 1838, and was reported to the Governor by the commissioners appointed for that purpose.

This Act of 1837 is as follows:—

"An Act

Authorizing the construction of a rail-road to connect the North Branch Division of the Pennsylvania Canal, at or within the Borough of Wilkesbarre, with the slack-water navigation of the Lehigh.

"Whereas, notwithstanding several Acts of Assembly have been passed authorizing the construction of railroads from the Susquehanna, at or near Wilkesbarre, to the river Lehigh, no preparations have yet been made to accomplish that object, so desirable to a large portion of the inhabitants of this commonwealth, now that the Lehigh Coal and Navigation Company are about completing their navigation to Wright's creek, the point considered most favorable for the connection of the two rivers by railroad; Therefore,

"Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same. That the Lehigh Coal and Navigation Company shall be deemed to have performed all the duties required of them by the act passed twentieth of March one thousand eight hundred and eighteen, entitled 'An Act to improve the navigation of the river Lehigh,' and by the act passed thirteenth February, eighteen hundred and twenty-two, entitled 'An Act to incorporate the Lehigh Coal and Navigation Company,' relative to the improvement of the second grand section of

the river Lehigh and shall be entitled to all the rights, powers and privileges granted by the said acts for the completion of the several kinds of navigation hereinafter mentioned, when they shall have completed their slack-water navigation along the valley of the Lehigh, from Mauch Chunk to the mouth of Wright's creek or to such other point as may be chosen for the termination of the Susquehanna and Lehigh canal, or of a railroad from a point at or within the borough of Wilkes-Barre to the Lehigh, and also, shall have completed a descending navigation by artificial freshets, from the great falls at Stoddartsville to the mouth of Wright's creek, according to the provisions of the several acts of Assembly heretofore passed upon the subject; *Provided* They shall have constructed a railroad connecting the slack-water of the Lehigh river with a point at or within the borough of Wilkesbarre within three years from the twentieth day of March one thousand eight hundred and thirty-seven; *Provided Always* That nothing herein contained shall be construed to divest or in anywise affect any cause or causes of action which may have arisen or accrued to any corporation or individual against the said Lehigh Coal and Navigation Company previously to the passing of this act but the same may be pursued and prosecuted with the effect as if this act had not been passed; nor shall anything in this act be construed to authorize the said company to interfere with or obstruct the repair or completion of the Beaver Meadow Rail-Road: *Provided*, The toll on mineral coal descending the Lehigh navigation, from any point on the same, shall not exceed one cent and a quarter per ton of twenty-two hundred and forty pounds per mile, throughout the whole distance that such coal may be transported on the navigation; that the toll on lumber in boats from any point on the navigation, shall not exceed one cent and a quarter per thousand feet board measure, per mile for such distance, and the toll on lumber in rafts, shall not exceed two and a half cents per mile per thousand feet for such distance: *Provided*, That the toll on lumber in rafts from

Stoddartsville to Wright's creek, shall not exceed the charge for lumber in boats below Wright's creek: *And Provided*, That if the tolls on the Morris Canal, the Delaware and Raritan Canal, or the Delaware Division of the Pennsylvania Canal, shall be raised above their present rates on those articles, the tolls on the Lehigh Navigation may be raised in the same ratio.

SECT. 2. It shall and may be lawful for the Lehigh Coal and Navigation Company to increase their capital stock, by an amount not exceeding six hundred thousand dollars, either by new subscriptions or by the sale of shares as they may think proper.

SECT. 3. The Lehigh Coal and Navigation Company shall have authority and power, by themselves, their engineers, superintendents, artists and workmen, to enter in and upon, and occupy for the purposes, all lands which may be necessary or suitable for the construction of the rail-road mentioned in the proviso to the first section of this act, and there to construct the said rail-road, inclined planes, steam engines, with the necessary buildings, machinery, or other devices, doing as little damage as possible, and satisfying the owner or owners thereof; but if the parties cannot agree upon the compensation to be made to such owner or owners, it shall and may be lawful for the parties to appoint six suitable and judicious persons, who shall be under oath or affirmation, and who shall reside within the proper county, where the land lies, or if they cannot agree upon such persons, then either of the parties may apply to the court of Common Pleas of the proper county where the land lies, and said court shall award a venire, directed to the sheriff, to summon a jury of disinterested men, in order to ascertain and report to said court what damages, if any, have been sustained by the owner or owners of said ground, by reason of such rail-road, inclined planes, or other device, passing through his, her or their land, which reports being confirmed by the court, judgment shall be entered and execution may ensue in case

of non-payment for the sum awarded, with reasonable costs, to be assessed by the court; and it shall be the duty of the jury, or six appraisers, as the case may be, in valuing any land, to take into consideration the advantages derived to the owner or owners of the premises from the said rail-road; *Provided*, That either party may appeal to the court within thirty days after said report may have been filed in the prothonotary's office of the proper county, in the same manner as appeals are allowed in other cases; *And Provided Also*, That if any person owning land or any other property which shall be affected by this act, be *feme covert*, under age, *non-compos mentis* or out of the state, then and in either of those cases, the said Lehigh Coal and Navigation Company shall, within one year thereafter, represent the same to a neighboring justice of the peace, or to the court of Common Pleas of the county, as the case may be, who shall proceed thereon in the same manner, and to the same effect, as is directed by this act in similar cases.

"SECT. 4. The Lehigh Coal and Navigation Company, by and with their superintendents, engineers, artists, workmen and labourers, with their tools, instruments, carts, wagons, and other carriages and beasts of burthen and draft, may enter upon the lands continuous or near to the said railroad, giving notice to the owners or occupiers thereof, and from thence take and carry away any stone, timber, gravel, sand, earth or other material which may be necessary for constructing said rail-road, doing as little damage thereto as possible, and repairing any breaches they make in the enclosures thereof, and making amends for any damages that may be done thereon, and paying for the materials taken away, the amount whereof, if the parties do not agree, shall be assessed and valued by any three disinterested freeholders residing in the neighborhood, under oath or affirmation, to be appointed by consent of the parties, or if they cannot agree, by any disinterested justice of the peace of the proper county, allowing an appeal to the court of Common Pleas, as in the third section of this act.

"SECT 5. The Lehigh Coal and Navigation Company may charge and receive toll for passing on the said rail-road, on coal not exceeding one and a half cents per ton per mile, on other articles not exceeding two cents per ton per mile, on each horse not employed in drawing a car or carriage, on which toll is charged, one cent per mile, on each person drawn in a car or carriage, other than the driver, one cent per mile; *Provided*, That at inclined planes where stationary power is required, three times the toll allowed by this action for one mile of road, may be charged for any article passing up or down such plane.

"SECT. 6. The seventh section of the supplementary act, passed the third day of April, one thousand eight hundred and thirty-two regulating the travelling and transportation on the Mine Hill and Schuylkill Haven Rail-road, shall be considered a portion of this act, excepting that part of said section which provides that 'no person shall intersect said road without the permission of the board of managers,' that the said rail-road shall be deemed a public highway, and any person or companies may be permitted to intersect the same.

"SECT. 7. If any person or persons shall wilfully and knowingly break, injure or destroy the said rail-road, or any part thereof, or any work, edifice or device, or any part thereof, to be erected by the said company in pursuance of this act, or shall in any manner obstruct the free passage along the said rail-road, he, she or they, shall forfeit and pay to the said company three times the actual damage thereby sustained, to be sued for and recovered, together with costs of suit, in any court having cognizance thereof, by action of debt, in the name and for the use of the said company.

"SECT. 8. If any owner or driver of any car, carriage, wagon or conveyance, on the said rail-road, shall pass by any place appointed for receiving tolls, without making payment thereof, with intent to defraud the said company, he, she or they so offending, shall forfeit and pay for every such offense, for the use of said company,

the sum of twenty dollars, to be used for and recovered by action of debt, before any justice of the peace in like manner, and subject to the same rules and regulations as debts under one hundred dollars may be sued for and recovered, together with costs of suit.

"SECT. 9. That the rail-road authorized to be constructed by this act, shall be of the usual and ordinary width, and that it shall and may be lawful for any rail-road company now incorporated, or hereafter to be incorporated, or any individuals, or association of individuals, to intersect said rail-road by other rail-roads, at any place where it may be by them deemed expedient; such railroad company, individuals, or association of individuals, so intersecting, to construct, under the direction of the Lehigh Coal and Navigation Company, the necessary intersections, sideways, and switches, and keep the same in good order and repair, and in such position as not in any way to obstruct or impede the free use of the said rail-road by the Lehigh Coal and Navigation Company, their agents or engineers, or other persons using said road.

"SECT. 10. So much of any former act as is inconsistent with this act, or as required or provides for the completion of a slack-water navigation from the mouth of Wright's creek to Stoddartsville, in the second grand section of the river Lehigh, be, and the same is hereby repealed.

SECT. 11. This act shall not go into effect unless it be accepted by two-thirds of the votes of the stockholders of the Lehigh Coal and Navigation Company, present at a meeting to be called for that purpose, within two months from the passage of this act, nor until a certificate of such acceptance, under the seal of the corporation, attested by the president and secretary thereof, shall have been deposited in the office of the Secretary of the Commonwealth; *Provided*, That the legislature may reduce or regulate the tolls on the said rail-road.

"LEWIS DEWART,
"Speaker of the House of Representatives.
"THOMAS S. CUNNINGHAM,
"Speaker of the Senate.

"Approved—The thirteenth day of March, Anno Domini, one thousand eight hundred and thirty-seven.

"JOSEPH RITNER."

This Act was accepted by the stockholders at the meeting of May 10th, 1837.

Josiah White thus summarizes the early work of the company:—

"The Co. have always declared they were in the pursuit of a practical work, & which it is presumed their History fully proves. They feel they have fulfilled the conditions of their Law in Good faith, & that on the whole they have performed their duty, which if not the most arduous of the kind in the History of their country, it has been enough so, & that as the Pioneer, in introducing one of the greatest staples Pennsa can boast of (Anthracite Coal,) making the best Canal as well as the first Railroad in the State, & introduced into usefulness the cheap plan of making a navigation by artificial freshets. In the upper seen 2 dams are made to supply an artificial fresh a distance of 12 miles, & a fall of 336 ft, that they are entitled at least to the equal protection of Law, in common with their fellow citizens, & they don't think it their interest, or the public interest, for them or for any to have more, even if common honesty would bear out another course but which they very much doubt. (*these last Remarks are made as a disposition in our Legislature at this time 1832 was evinced to encourage the Beaver Meadow Co. & other interests in the 2nd Coal Region to persecute us, & break us down if in their power*)"

The great flood of 1841 again well nigh ruined the company but by means of a general mortgage of all their property, authorized by special Act of the Legislature of February 16th, 1842, P. L., 19, they were enabled to borrow money sufficient to tide them over the difficulty.

In 1862, another very severe flood occurred on the river which washed away a great number of the dams, particularly those at the head of the navigation.

By the Act of March 4th, 1863, P. L., 99, the company was authorized to extend the railroad from White Haven

down to Mauch Chunk, and was authorized to abandon so much of their navigation above Mauch Chunk as they desired. This Act is as follows:—

"An Act

To authorize the Lehigh Coal and Navigation Company to extend their rail road from White Haven to Mauch Chunk.

"Whereas, The valley of the river Lehigh has on several occasions, and latterly on the fourth day of June, one thousand eight hundred and sixty-two, been the scene of fearful floods, occasioning great loss of life and property along the line of said river.

And Whereas, The severity of said floods is thought to have been greatly increased by the destruction, mostly above Mauch Chunk, of dams and other works erected by the Lehigh Coal and Navigation Company to create a slack-water navigation along said river, in accordance with the requirements of divers Acts of Assembly relating to said Company.

"And Whereas, It would greatly conduce to the future safety of persons and property along the line of said river if a portion of said works now in ruins on the upper section of said navigation should not be restored.

"And Whereas, It is nevertheless important to the legitimate interests of said Company, and to the public, that the said slackwater navigation should not be disconnected from the railroad also belonging to said Company, and known as the Lehigh and Susquehanna railroad, constructed under a certain Act of Assembly, entitled 'An Act authorizing the construction of a railroad to connect the North Branch division of the Pennsylvania canal, at or within the borough of Wilkesbarre, with the slackwater navigation of the Lehigh,' approved the thirteenth day of March, one thousand eight hundred and thirty seven; said rail road and slackwater navigation forming a continuous line from Wilkesbarre to Easton. Therefore—

"Section 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the au-*

thority of the same, That the Lehigh Coal and Navigation Company be and they are hereby relieved from any and every obligation, at law or in equity, to place or keep in repair their slackwater navigation above Mauch Chunk, or any portion thereof, except such parts of the same, as the Board of Managers of said Company shall, within one year from the date hereof, determine to repair, and signify such determination by writing filed in the office of the Secretary of the Commonwealth; and the said Company are hereby authorized and empowered to construct or cause to be constructed upon and along the site heretofore occupied by the said navigation, and the works connected therewith, or upon any land conveniently near to said navigation, a railway extending from the present terminus of the Lehigh and Susquehanna rail road, near the borough of White Haven, to Mauch Chunk, or from and to any point or points between said terminus and said Mauch Chunk; *Provided, however*, that the said Company shall, within one year from the date hereof, commence some portion of the railway hereby authorized, and complete the same within five years from the passage of this act. *And provided further*, that the said Company may, at any time within the said five years, from time to time commence, and within a reasonable time thereafter complete any further portion or the whole of said railway, notwithstanding they may, within the term of one year as aforesaid, have commenced the construction of only a portion of said entire route; and the said Company shall have the right to connect their said railway with the Hazelton, the Beaver Meadow, the Lehigh Valley, and any other rail road now constructed, or which may hereafter be constructed to run to or along the valley of the Lehigh (in the vicinity of their said railway). *Provided also*, that nothing herein contained shall be construed to interfere with or bar any suit or action now pending against the said Lehigh Coal and Navigation Company; and that a continuous line of rail road communication between White Haven and Mauch Chunk, on one or other side of the river, shall be in operation within two years from the date hereof.

"SECTION 2. That the said Company may make such alterations in the location of their said Lehigh and Susquehanna rail road, between the head of the inclined planes on said road and the borough of Wilkesbarre, as they may deem expedient; and may increase or diminish the number of said inclined planes if they shall deem the same advisable, and may suspend or discontinue, from time to time, the use of said inclined planes, whenever they shall deem it more advantageous to do their transportation with locomotive engines over the branch road commonly called Back Track, which they have been authorized to build from the head to the foot of the planes, by the Act of Assembly approved the eighteenth day of April, eighteen hundred and sixty-one. *Provided*, that instead of being allowed as heretofore to charge at each inclined plane where stationary power is used, three times the toll allowed for one mile of road, said Company may charge at each plane not exceeding three times as much as for a length of road with locomotive power equal to the length of such inclined plane.

"SECTION 3. That the said Company shall have the right to build branches not exceeding eight miles in length each, to connect their said Lehigh and Susquehanna rail road, or the aforesaid Back Track, or the railway authorized by this act with coal mines or with other rail roads.

"SECTION 4. That for the purpose of constructing the improvements authorized by this act, and for repairing their work, and for general purposes of their business, it shall be lawful for said Company to borrow, from time to time, such sums of money as they shall deem expedient not in the whole exceeding three millions of dollars and to mortgage their canal, slackwater navigation, rail roads, property and franchises or any part thereof, as security therefor.

"SECTION 5. That the provisions of the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth and eighteenth sections of the act of nineteenth February eighteen hundred and forty-nine, entitled "An Act regu-

lating railroad companies,' and those of the several existing supplements to said act, are hereby extended to the Lehigh Coal and Navigation Company, so far as relates to the construction, maintenance, use, management and repairs of the railway and branches authorized by this act, and of the Lehigh and Susquehanna rail road and the branches thereof; and the said the Lehigh Coal and Navigation Company are hereby fully invested with all the rights, powers, privileges and franchises therein contained.

"SECTION 6. That so much of any Act or Acts of Assembly as is hereby altered or supplied be and the same is hereby repealed.

"SECTION 7. That this act shall not go into effect unless it be accepted by a majority of the votes of the stockholders of the Lehigh Coal and Navigation Company, present at a meeting to be called for that purpose, within two months from the passage of this act, nor until a certificate of such acceptance, under the seal of the corporation, attested by the President and Secretary thereof, shall have been deposited in the office of the Secretary of the Commonwealth.

"JOHN CESSNA,
"Speaker of the House of Representatives.

"GEORGE V. LAWRENCE,
"Speaker of the Senate.

"Approved—The fourth day of March, Anno Domini one thousand eight hundred and sixty-three.

"A. G. CURTIN."

The Act of March 16th, 1864 (P. L., 11), further authorized the company to extend the railroad from Mauch Chunk to Easton, and to cross the River Delaware at Easton by means of a bridge. The Act of April 6th, 1865, of the State of New Jersey, authorized them to build a bridge across the Delaware.

in pursuance of these Acts of Assembly, the company proceeded with the construction of the so-called Lehigh and Susquehanna Railroad, which was completed in 1868.

Extract from the report of the Board of Managers of the Lehigh Coal and Navigation Company for the year 1867, as follows:—

"The Board had not been unmindful of the importance of preventing, as far as possible, the large amount of our stock, to be issued to new parties under the above arrangements, from coming suddenly upon the market, and although it was found to be impracticable to make any binding stipulation to that effect, in writing, yet they had such assurances from the gentleman with whom the negotiation was mainly carried on, and who himself furnished the largest amount of Wilkesbarre Coal and Iron Company stock, that it is believed that, had he lived, neither his own stock nor that of most of his associates would have been thrown upon the market. Unfortunately he died a few days only before we issued the stock, and we not only lost the benefit of his promised aid and great influence with others, but the circumstances of his estate were such that even his own stock had to be forced to an early sale, so that the market almost immediately gave way beneath the weight of the stock suddenly crowded upon it. Thus was brought about that rapid decline in the market price in September and October, which, by alarming the public and impairing the credit of the Company, interfered most seriously with contemplated financial arrangements, and brought about the recent crisis in our affairs. Although unfortunate in its immediate results, the transaction in question is deemed most important and beneficial to the permanent interests of the stockholders."

"It has been supposed that sufficient funds to build the new railroad would be realized from the three issues of twenty per cent. each of new stock at par, added to the available proceeds of the loan of 1884 and the

$2,000,000 loan of 1897, together with the expected surplus profits of the Company's current business; but the amount of the latter having fallen much below our expectations owing to the depressed condition of the coal trade for several years past, and the railroad having cost much more than the original estimates, most of the loans having been sold at a discount, and a portion of the Company's resources applied in other ways, it became apparent, when the estimates were received in January, 1867, for work still to be done, that a further sum of $5,000,000 would be required. Hence the passage of the Act of Assembly above referred to. The Company in the meantime, put out the $2,000,000 loan, secured on the railroad from Mauch Chunk to Easton. This loan went off so slowly, and the market in this country for nearly all loans other than those of the United States Government was so exceedingly dull, that the Board decided to endeavor to place the $5,000,000 loan in England, in the shape of sterling bonds. It was to give additional confidence to the foreign public, that it was thought best to obtain the express sanction of the stockholders to the loan, and to the Company contracting to pay both principal and interest in gold. Negotiations were going on, meanwhile, which had resulted in the signing, at London, on the 14th of September, of a paper from which the Board were led to expect that the whole loan would be taken in England, at a figure which would have netted the Company about par. In order to gain time, however, to manage this matter to the best advantage, the stockholders were invited by a circular bearing date October 3rd to subscribe to a six per cent. loan payable in 1877, and convertible, at the option of the holder, into the capital stock of the Company at par, at any time within five years. This loan was offered to the stockholders at eighty per cent., to an extent not exceeding forty per cent. of the par value of their stock. The amount of loan thus offered was about $3,000,000. Only about $1,200,000 was taken, netting the Company less than $1,000,000, payable in several installments. This made it

highly important to hurry on the negotiation of the foreign loan, from which the most satisfactory results were still looked for, when, on the 31st of October (the market price of the Company's stock having materially declined in the meantime, from the sale of so much of that issued to parties in New York in exchange for Wilkesbarre stock), it became unexpectedly apparent, from a conference with a gentleman acting as counsel for the London house, with whom the negotiations had been carried on, that there was no probability that any further progress could be made in that direction. The reasons assigned were doubts as to some points of law. It was then too late for any further negotiations abroad. The Company had borrowed large sums for short periods which were rapidly falling due, and it became necessary to place the $5,000,000 loan at once on the best terms attainable. Through the active and zealous co-operation of friends of the Company outside of the Board, this was done, and the whole loan was taken in this country at 85 per cent., and the Company relieved from the embarrassments with which it was then threatened. It was felt, however, that to secure the taking of the loan, it was proper to invite those whose influence had been invoked in its behalf to take a prominent part in the management of the Company's affairs, and the Board was accordingly reorganized on the 29th of November, James S. Cox retiring from the Presidency, and Messrs. Jacob P. Jones, Samuel E. Stokes, Frederick Graff and Charles Wheeler, resigning their seats as Managers, the Board filling the vacancies thus created by electing Edward W. Clarke, President, and Messrs. John Welsh, Clarence H. Clark and George F. Tyler, Managers.

Extract from the Report of the Board of Managers of the Lehigh Coal and Navigation Company for the year 1869:—

"The 17,144 shares of the Wilkesbarre Coal and Iron Company stock purchased in 1867 was sold in June last,

and the Company received in exchange a tract of 2000 acres of land near the foot of our Wilkesbarre planes and a considerable sum of money in addition. Valuing the land at the very low price of $245 per acre, we realized the par value of our own stock given in exchange for the Wilkesbarre stock in September, 1867. Whatever the land is worth in excess of the $245 per acre, may be regarded as profit on the transaction.

"The purchase of stock was made for the purpose of insuring tonnage for our railroads and canals, and was induced by the policy of some of the large companies operating in the Wyoming region, of controlling large bodies of coal lands. That policy is still continued, and at this time all of the railroad and canal companies leading from that region own and lease extensive tracts of land. It was not regarded as prudent to dispose of the Company's interest in the Wilkesbarre Coal and Iron Company stock, possibly resulting in the withdrawal of their business, without making other arrangements for trade.

"The lands received from the Wilkesbarre Coal and Iron Company, in Hanover township, adjoin the Biddle lands, and the two tracts amount to over 2000 acres, nearly all within the coal field. The Cook tract, near this body of land, has about 100 acres of coal. In addition, purchases have been made to the extent of 3580 acres located in Newport township, five miles distant from the western limit of the Hanover township tract.

"The reasons that led to the sale of the stock and the purchase of these lands were various. The price offered was considered higher, relatively, than the lands could be purchased at. Large expenditures would be necessary during the next two or three years to continue the coal product of the Wilkesbarre Coal and Iron Company at the rate of 1869, and further expenditures were deemed judicious to increase the product and decrease the cost of mining. While we owned a majority of the stock, the remaining stockholders were indisposed to advance any portion of the money necessary for these developments. It was estimated that no larger expenditure during 1869

and the two following years, would be necessary, beyond the proceeds of the sale of the Wilkesbarre Coal and Iron Company stock, to purchase the large body of land and give us the entire control of, and profit on, a large product of coal, than it would be necessary for us to advance to retain the control and half-ownership of the property of the Wilkesbarre Coal and Iron Company.

"The only operations on the Hanover lands are those of Messrs. Parrish & Thomas, who mine from a portion of the property under a lease granted in 1865, which yields a rental of about $30,000 per annum. A shaft near the middle of the property, on the line of the Pennsylvania Canal, shows the top vein to be unusually fine in quality at that point, and at an early period it will be advisable to build a breaker and open the mine.

"On the Newport lands, extensive developments were in progress at the time of purchase; for the details of which, see the report of the Superintendent. They contemplate a production of 300,000 to 400,000 tons a year, and further developments are practicable to at least the extent of doubling that product.

"The Hanover and Biddle tracts offer an opportunity for an equal number of collieries.

"The interest of the Company in coal lands in the Wyoming region is:—

	Acres.	Cost.
Hanover tract from Wilkesbarre Coal and Iron Company, over	2000	$493,001.30
Biddle lands, over	800	169,497.32
Cook lands, portion underlaid with coal	100	45,000.00
Newport township lands	3580	1,413,976.96
In the aggregate	6480	$2,121,475.58

Of which 5700 acres are within the coal-field."

Extract from the Supplementary Report of the Board of Managers of the Lehigh Coal and Navigation Company for the year 1870:

"In addition to the reasons stated at the special meeting as among those which induced the managers to enter into the negotiation for the lease, may be added the difficulty of carrying our large and increasing floating debt. The railroads were making constant demands on our resources for additional sidings, tracks, buildings and equipment; and by leasing them we are not only relieved from all demands for equipment, and any present demands for money for additions to the road, but have also secured financial aid which will enable us to pay off a portion of the floating debt and fund the remainder. The sale to the Central Company of materials, machinery and securities, including a million of bonds of our proposed general mortgage, will give us $1,500,000, and this amount, with our net receipts during the first four months after resumption of work at the mines, will reduce our floating debt to less than one million dollars."

Extract from the Report of the Board of Managers of the Lehigh Coal and Navigation Company, for the year 1871:

"The Company enjoyed many years of great prosperity before it commenced extending its railroad, which was built from White Haven to Wilkesbarre in 1837 to 1840, at a cost of $1,380,000. The principal extension from Mauch Chunk to Phillipsburg changed the company from a coal and navigation company to a railroad company, owning mines, with a canal as a subordinate means of transportation. The railroad, when completed to a connection with the New Jersey roads, had cost, with its equipment, more than twice as much as the whole amount of stock and bonds outstanding previous to 1864.

"A large debt had been incurred, besides an increase of stock, and to secure sufficient revenue to pay the heavy

interest accruing, further expenditures were necessary, at a time when the stock and bonds of the Company were very much depressed, and its credit seemed exhausted.

"The New Jersey roads would not furnish their quota of cars for our business, and we were obliged to provide them for the trade from the mines to tide. Our own mines, and those of the Wilkesbarre Coal and Iron Company, controlled in 1867, could not supply sufficient tonnage to make both canal and rail road remunerative, and it was necessary to secure additional lands at a time when other Companies were making large purchases in the field (the Wyoming) from which we were seeking tonnage. A better connection with our Lehigh mines than the old Gravity road was important, as was also a connection with other coal fields.

"During a period of great irregularity in the coal trade, strikes among miners, freshets on the canals, the purpose of increasing our facilities for doing business, of improving our railroad connection, and enlarging our coal estate, was steadily pursued at a cost of several millions of dollars, as will be seen by the following statement:—

Expended.	1868.	1869.	1870.	1871.	Aggregate.
On Lehigh and Susquehanna Railroad and branches	$803,376.03	$416,878.91	$527,833.65	$58,269.11	$1,806,357.70
On Railroad Equipment by Company	1,075,119.85	208,217.31	18,442.80	4,824.28	1,306,604.24
By Railroad Car Trust Association	100,542.40	643,936.93	5,400.00	.....	749,879.33
By Lehigh Equip. Trust	.....	291,128.50	507,621.50	.....	798,750.00
On Nesquehoning Valley R. R	20,207.99	236,478.97	712,773.12	313,345.38	1,282,805.46
On Wyoming Coal Lands and Improvements	.....	2,137,780.69	209,580.53	119,124.69	2,466,485.91
	$1,999,246.27	$3,934,421.31	$1,981,651.60	$495,563.46	$8,410,882.64

Expended in 1868	$1,999,246.27	
Expended in 1869	3,934,421.31	
Expended in 1870	1,981,651.60	
Expended in 1871	495,563.46	
		$8,410,882.64

"This large aggregate expenditure was rendered necessary by the outlay of $9,000,000 in railroad extension during the four years previous to 1868, to make that remunerative and to insure the future prosperity of the Company. The money was raised by various negotiations. There remained about $1,000,000 from the gold loan negotiation made late in 1867, and the sale of the Wilkesbarre Coal and Iron Co.'s stock provided about one-half of the amount expended in 1869 in the purchase of coal lands. The remainder was provided by the sale of other assets, new issue of bonds, car trust stocks, Nesquehoning Valley Railroad stock, and a portion is still carried on temporary obligations, which we hope to fund during this year by the sale of a part of our consolidated mortgage 7 per cent. bonds, which have been recently declared by an Act of Assembly a legal investment for trustees. We propose to sell $2,000,000 of the loan, and our total mortgage debt then outstanding, after deducting $2,310,000, the payment of which has been assumed by the Central Railroad Company of New Jersey, and which is still a lien on the equipment sold to that Company, will be about $13,000,000, secured by mortgage of property worth over $25,000,000.

The Central Railroad Company of New Jersey has also assumed our obligations under the car trusts, one of which it has already extinguished.

"While we were taxing our resources to the utmost for the development of our railroad interests, we were compelled to neglect our canals and Lehigh coal lands. For the development of the latter we expended in 1868, $94,834.30; in 1869, $125,330.42; in 1870, $47,169.51, thereby increasing but slightly their capacity for production. There was at all times an urgent demand for money on the part of the railroad, and as expenditures there would give us an immediate return, and those on our mines would give no revenues for many months, the railroad demand was met, and that of the coal lands postponed.

"The lease of our railroads, early in 1871, to the Central Railroad Company of New Jersey, was a close alliance

of interests, securing the cooperation of a wealthy corporation in the pursuit of a line of policy which we had followed to the best of our ability for some years. The development by that Company of our railroad interests has left us free to use our own resources on our coal property. While we shall profit by the development of both interests, they secure a large and increasing business for their railroad; and the alliance which has been and promises to be of the most friendly character, is and will be mutually beneficial. The recent agreement uniting the interests of the Central Railroad Company with those of the Delaware, Lackawanna and Western Railroad Company has no tendency to disturb these friendly relations, but rather to cement them. The natural result of that union and the alliance with this Company will be the harmonizing of the policies of the three companies in the management of their coal interests, securing to all of them the advantages of controlling as a unit the production and sale of a larger amount of coal than is under the control of any other corporation.

"We are now pursuing on our coal property a vigorous policy of development. We have 8 Lehigh collieries, with an aggregate capacity of 75,000 tons a month. To these we propose to add one more colliery, which we hope to have in operation before the close of 1873, and to increase the production of the others, so that the 9 collieries will have a capacity of at least 125,000 tons per month within two years; and, if deemed expedient, we can readily increase much beyond that quantity."

Extract from the report of the Board of Managers of the Lehigh Coal and Navigation Company for the year 1873:—

"During the greater part of the year the Company was compelled to pay very high rates on its floating debt. The competition among borrowers, principally railroad companies, for money offered for temporary loan, forced rates up very high during the winter and spring, and

while rates were comparatively low in the summer the supply did not at any time during the year exceed the wants of borrowers. When the panic checked negotiations in the middle of September, our floating debt was at its maximum, and great difficulty was experienced in meeting maturing obligations. The cash resources of the Company, the large revenue from the very profitable business in September and the still large, but greatly reduced, business of October, supplemented by the sale of over 9000 shares of stock owned by the Company, with the partial renewals of maturing obligations, carried us forward for some weeks, and when these means were exhausted the Board resolved to present no obstacle to the conversion into stock of the convertible loan due in 1882, of which a large amount was pledged for maturing and demand obligations. Some conversions were made and the stock sold by parties to whom we were indebted, when the Board deemed it best to control the conversions and sales where practicable, and succeeded generally in doing so. The total amount of loan converted was $605,500 into 12,110 shares of stock, of which 10,770 shares were sold at an average of about $25½. The remaining 1340 shares were redeemed and are now held by the Company. The 9417 shares held in the contingent fund and first sold, cost in 1807 and previously about $57½ per share. The total loss on all the stock sold was $567,634.64, and the amount of stock now outstanding is 187,807 shares of the par value of $9,390,350. The panic caught us in the midst of a large and very profitable business and materially checked it, thereby reducing the profits of the year; the high rates for money all the year, particularly in the spring and fall, added largely to the interest charge which on the floating debt exceeded half a million dollars. Notwithstanding these drawbacks the revenue very nearly met the interest and expenses of the year.

"The Board has been at all times anxious to fund the floating debt, always a source of danger to the Company. The policy inaugurated many years ago of keeping the amount of stock smaller than the indebtedness

was profitable during prosperous periods, but a source of embarrassment when coal interests were depressed. While the interest on existing indebtedness was earned with difficulty, it was not practicable either to increase the stock basis or to sell more bonds at reasonable prices. The property of the Company was large and valuable, but its very magnitude was a source of danger, as large expenditures were necessary to make it remunerative. Bonds could not be sold until the payment of interest was certain, and this could not be established until the property was developed. This required large expenditures of money, and as a necessity a floating debt was incurred, which continued to increase as our expectations of revenue were disappointed by floods or the frequent disturbances of the money market and business interests during the past five or six years. At the time of the recent panic the business of our Railroads seemed well established, and the revenue therefrom likely to meet fully our expectations. After long delays our mines were at last in condition to make ample returns, but the utter prostration of business by the panic threatened to defer prosperity to another year, and the Board, feeling the importance of retiring the floating debt without further delay, determined to seek relief by the sale of the Company's coal lands in the Wyoming region, which not being largely developed, were producing but a small revenue. After long negotiations a sale was finally effected to the Honey Brook Coal Company (controlled by the Central Railroad Company of New Jersey), at the rate of $700 per acre for the coal area, the improvements and personal property to be taken at a valuation. This sale was followed so soon by the lease of our Lehigh coal lands and a contract for the maintenance and operation of our Canals, that it was substantially one negotiation. As the Central Railroad Company were already operating our Railroads, the control they had just acquired of our Canals and of our coal lands by their coal organization put them in possession of nearly all of our property.

"For the railroad they pay us under the lease executed March 31, 1871, 1-3 of the gross receipts.

"The Wyoming lands, improvements, leases and personal property were sold for $4,728,803.63, and the proceeds will be applied to the reduction of our funded and floating debt."

Extract from the Report of the Board of Managers of the Lehigh Coal and Navigation Company, for the year 1874:

"The floating debt, which has been for years a source of great anxiety and danger to the Company, is all provided for. The Lehigh and Wilkes-Barre Coal Company paid us during 1874 all but one million dollars of the balance due on purchases of real and personal property. The payment was in money and not in the bonds named in the contract of sale. Of the remaining one million they have paid $692,683.34 since the first of January and the balance will be paid on or before the first of July. To provide for the remainder of the floating debt we have sold one million dollars of our consolidated seven per cent. bonds and with the proceeds we are paying our temporary obligations as they mature."

Extract from the Report of the Board of Managers of the Lehigh Coal and Navigation Company, for the year 1877:

"The year just closed has been one of the most eventful in the history of the Company. Previous to the last annual meeting the properties of the Central Railroad Company of New Jersey and of the Lehigh and Wilkes-Barre Coal Company had passed into the hands of Receivers, the two Companies owing us for cash advances and postponed rents over eleven hundred thousand dollars, as then stated to the stockholders. The Receivers of the Coal Company found themselves unable to pay the rent of our coal lands, and while the Receiver of the Railroad Company was willing to pay promptly the cur-

rent rent of the railroads he declined to pay either the over due rent or the stipulated amounts maturing under the canal contract, and he refused to continue to operate the canals, abandoning all control over them. Not willing to assent to this position, and failing in our efforts to move the Receiver from it, we applied to the United States Circuit Court for leave to enforce our rights under the railroad contract. After argument before the Court, and while waiting for a decision, a compromise agreement, under date of June 23rd, was made with the two companies, under which settlement was effected of all accounts and contests between us.

"The lease of the railroad was executed March 31st, 1871, and the contract for operating the canals, which was entered into nearly three years later, was in no way connected with it. Default on the latter agreement did not give us the right to terminate the former. The railroad Company had a perfect right to retain our railroads as long as they performed the obligations of the contract of March 31st, 1871.

"The canal contract and the lease of our Lehigh coal lands were negotiated at the close of 1873, and were dependent on each other. While we retained our coal lands we had the power to send a large part of their product to market by canal and we were unwilling to lease the mines without providing for the canals also. Accordingly, when we leased our mines to the Lehigh and Wilkes-Barre Coal Company, it was agreed that the Central Railroad Company should operate our canals and pay us a fixed revenue of $200,000 per annum, default on either contract to give us the right to terminate both. This right was recognized in the agreement of June 23rd, and was subsequently exercised by this Company, but we desired to defer disintegration as long as possible, and wished also to give to the Receivers of the Coal Company the opportunity, which an advance in coal would afford to them, to save the advanced royalties and the large outlay on the mines made by the Lehigh and Wilkes-Barre Coal Company. For these reasons we

agreed to defer taking possession until the end of the year and to permit both mines and canals to be operated for our account after April 1st. The hoped for improvement in coal was not realized, and the receiver of the Railroad company desiring to be relieved of even nominal control over the canals, we resumed possession of both canals and mines early in January of this year."

Statement showing dividends paid to stockholders of the Lehigh Coal and Navigation Company, from the year 1822 to the year 1913, showing the average dividend for the ninety-two years paid to have been 4.641 per cent. per annum, and the average dividend for the period from 1871 to 1913, inclusive, 43 years, 4.756 per cent. per annum, as follows:

STATEMENT OF DIVIDENDS PAID TO STOCKHOLDERS OF THE LEHIGH COAL AND NAVIGATION COMPANY.

DIVIDENDS.

No.	Date of Declaration.	Rate.	Per Share.
1	Jan. 1822	3%	$1.50
2	July 1822	3%	1.50
3	Jan. 1823	3%	1.50
4	July 1823	3%	1.50
5	Jan. 1824	3%	1.50
6	July 5, 1824	3%	1.50
7	Jan. 3, 1825	3%	1.50
8	July 4, 1825	3%	1.50
9	Jan. 1, 1826	3%	1.50
10	July 3, 1826	3%	1.50
11	Jan. 1, 1827	3%	1.50

DIVIDENDS PASSED—6 MONTHS.

12	Jan. 7, 1828	3%	1.50
13	July 7, 1828	3%	1.50
14	Jan. 5, 1829	3%	1.50

DIVIDENDS PASSED—4 YEARS, 6 MONTHS.

No.	Date of Declaration.	Rate.	Per Share.
15	July 1, 1833	3%	1.50
16	Jan. 6, 1834	3%	1.50
17	July 7, 1834	3%	1.50
18	Jan. 5, 1835	3½%	1.75
19	July 6, 1835	3½%	1.75
20	Jan. 4, 1836	4%	2.00
21	July 4, 1836	4%	2.00
22	Jan. 2, 1837	4½%	2.25
23	July 3, 1837	4½%	2.25
24	Jan. 1, 1838	5%	2.50
25	July 2, 1838	5%	2.50
26	Jan. 7, 1839	5%	2.50
27	July 1, 1839	5%	2.50
28	Jan. 6, 1840	5%	2.50

DIVIDENDS PASSED—12 YEARS, 3 MONTHS.

29	May 12, 1852	6%	3.00
30	May 24, 1853	6%	3.00
31	May 23, 1854	3%	1.50
32	Nov. 28, 1854	3%	1.50
33	May 22, 1855	3%	1.50
34	Nov. 27, 1855	3%	1.50
35	May 27, 1856	3%	1.50
36	Nov. 25, 1856	3%	1.50
37	May 26, 1857	3%	1.50
38	Nov. 24, 1857	3%	1.50
39	May 25, 1856	3%	1.50
40	Nov. 16, 1858	3%	1.50
41	May 24, 1859	3%	1.50
42	Nov. 22, 1859	3%	1.50
43	May 22, 1860	3%	1.50
44	Nov. 27, 1860	3%	1.50
45	May 27, 1861	3%	1.50
46	Nov. 26, 1861	3%	1.50
47	May 27, 1862	3%	1.50
48	Nov. 25, 1862	3%	1.50
49	May 26, 1863	3%	1.50
50	Nov. 24, 1863	3%	1.50
51	May 24, 1864	3%	1.50
52	Nov. 22, 1864	5%	2.50
53	May 23, 1865	5%	2.50
54	Nov. 28, 1865	5%	2.50
55	May 22, 1866	5%	2.50
56	Nov. 27, 1866	5%	2.50
57	May 28, 1867	3%	1.50

DIVIDENDS PASSED—7 YEARS.

No.	Date of Declaration.	Rate.	Per Share.
58	May 26, 1874	2%	1 00
59	Aug. 25, 1874	2%	1 00
60	Nov. 24, 1874	2%	1 00
61	Feb. 23, 1875	2%	1 00
62	May 25, 1875	2%	1 00
63	Aug. 24, 1875	2%	1 00
64	Nov. 23, 1875	2%	1 00
65	Feb. 21, 1876	2%	1 00
66	May 23, 1876	2%	1 00
67	Aug. 22, 1876	1½%	75

DIVIDENDS PASSED—5 YEARS, 3 MONTHS.

68	Nov. 22, 1881	2%	1 00
69	May 23, 1882	2%	1 00
70	Nov. 28, 1882	2%	1 00
71	May 22, 1883	2½%	1 25
72	Nov. 27, 1883	3%	1 50
73	May 27, 1884	3%	1 50
74	Nov. 25, 1884	3%	1 50
75	May 26, 1885	3%	1 50
76	Nov. 24, 1885	2½%	1 25
77	May 25, 1886	2½%	1 25
78	Nov. 23, 1886	2%	1 00
79	May 24, 1887	2%	1 00
80	Nov. 22, 1887	2%	1 00
81	May 22, 1888	2%	1 00
82	Nov. 27, 1888	2½%	1 25
83	May 28, 1889	2½%	1 25
84	Nov. 26, 1889	2½%	1 25
85	May 27, 1890	2½%	1 25
86	Nov. 25, 1890	2½%	1 25
87	April 28, 1891	2½%	1 25
88	Nov. 3, 1891	2½%	1 25
89	May 2, 1892	2½%	1 25
90	Nov. 7, 1892	3%	1 50
91	May 1, 1893	3%	1 50
92	Nov. 6, 1893	3%	1 50
93	May 7, 1894	2½%	1 25
94	Nov. 5, 1894	2%	1 00
95	May 6, 1895	2%	1 00
96	Nov. 4, 1895	2%	1 00
97	May 4, 1896	2%	1 00
98	Nov. 9, 1896	2%	1 00

No.	Date of Declaration.	Rate.	Per Share.
99	May 3, 1897	2%	1.00
100	Nov. 1, 1897	2%	1.00
101	May 2, 1898	2%	1.00
102	Nov. 7, 1898	2%	1.00
103	May 1, 1899	2%	1.00
104	Nov. 6, 1899	2%	1.00
105	May 7, 1900	2½%	1.25
106	Nov. 5, 1900	3%	1.50
107	May 6, 1901	3%	1.50
108	Nov. 4, 1901	3%	1.50
109	May 5, 1902	3%	1.50
110	Nov. 3, 1902	2%	1.00
111	May 4, 1933	3%	1.50
112	Nov. 2, 1903	3%	1.50
113	May 2, 1904	3½%	1.75
114	Nov. 7, 1904	3½%	1.75
115	May 1, 1905	4%	2.00
116	Nov. 6, 1905	4%	2.00
117	May 7, 1906	4%	2.00
118	Nov. 5, 1906	4%	2.00
119	May 6, 1907	4%	2.00
120	Nov. 4, 1907	4%	2.00
121	April 27, 1908	4%	2.00
122	Oct. 26, 1908	4%	2.00
123	April 26, 1909	4%	2.00
124	Oct. 25, 1909	4%	2.00
Extra	Oct. 25, 1909	1%	.50
125	Dec. 27, 1909	15% Scrip	7.50
126	April 25, 1910	4%	2.00
127	June 27, 1910	2%	1.00
128	Oct. 24, 1910	2%	1.00
129	Jan. 23, 1911	2%	1.00
130	April 24, 1911	2%	1.00
131	June 26, 1911	2%	1.00
132	Oct. 23, 1911	2%	1.00
133	Jan. 22, 1912	2%	1.00
134	April 22, 1912	2%	1.00
135	June 24, 1912	2%	1.00
136	Oct. 28, 1912	2%	1.00
137	Feb. 28, 1913	2%	1.00
138	May 31, 1913	2%	1.00
139	Aug. 30, 1913	2%	1.00
140	Oct. 27, 1913	2%	1.00

Average for period 1822 to 1913 inclusive—92 years. 4.641% per annum.
Average for period 1871 to 1913 inclusive—43 years. 4.756% per annum.

Statement showing profit and loss account summary of the Lehigh Coal and Navigation Company, from December 31st, 1862, to December 31st, 1876:—

Profit and loss surplus December 31, 1862			$3,176,109.69
Net income year 1863		$794,527.49	
Dividends, 6 per cent.		148,797.00	
			645,730.49
Profit and loss surplus December 31, 1863			$3,821,840.18
Net income year 1864		$1,322,276.69	
Dividends, 8 per cent. and tax	$357,880.79		
Conversion of scrip to capital stock	1,803,000.00		
		2,160,880.79	
			838,604.10
Profit and loss surplus December 31, 1864			$2,983,236.08
Net income year 1865		$1,061,890.42	
Dividends, 10 per cent. and tax	$494,052.63		
U. S. tax 5 per cent	48,219.79		
		542,272.42	
			519,618.00
Profit and loss surplus December 31, 1865			$3,502,854.08
Net income year 1866		$648,225.88	
Dividends	$643,247.37		
U. S. and State taxes	116,130.90		
		759,378.27	
			111,152.39
Profit and loss surplus December 31, 1866			$3,391,701.69
Net income year 1867		$6,570.15	
Dividends	$197,572.11		
Discount loans and acceptances	1,421,259.57		
Donation to Hannah A. Walter	15,000.00		
Depreciation L. & S. R. R. equipment	300,497.38		
		1,934,329.06	
			1,927,758.91
Profit and loss surplus December 31, 1867			$1,463,942.78

Net income year 1868		$6,992.55	
Estimated loss suspended debt accounts 1867	$120,000.00		
Paid W. B. Coal & Iron Co. settlement alleged non-fulfillment of contract	17,408.99		
		137,408.99	
			130,416.44
Profit and loss surplus December 31, 1868			$1,333,526.34
Net income year 1869			334,701.54
Profit and loss surplus December 31, 1869			$1,668,227.88
Net income year 1870—loss		$297,691.52	
Extraordinary expenses D. D. Canal account freshet		91,293.23	
			388,984.75
Profit and loss surplus December 31, 1870			$1,279,243.13
Net income year 1871		$272,385.83	
Discount loans 1897 and 1884	$14,223.30		
Estimated appreciation coal lands	5,862,111.49		
	$5,876,334.79		
Discount loans	$486,370.61		
Depreciation and loss on improvement and equipment accounts	589,886.52		
Suspended debts	34,598.96		
Depreciation canal and shipping improvements	1,780,166.56		
Depreciation coal improvements and switchback R. R.	781,599.13		
	3,672,621.78		
		2,203,713.01	
			2,476,098.84
Profit and loss surplus December 31, 1871			$3,755,341.97
Net income year 1872—loss			275,926.34
Profit and loss surplus December 31, 1872			$3,479,415.63

Profit and loss surplus December 31, 1872			$3,479,415.63
Net income year 1873—loss		$35,380.95	
Revaluation of Wyoming lands		892,111.49	
Loss on stock sold		567,634.64	
		$1,495,127.08	
Profit on sale of Wyoming lands and improvements		$1,466,099.08	
			$29,028.00
Surplus (Profit and Loss and Dividend Fund Accounts) December 31, 1873			$3,450,387.63
Net income year 1874		$845,778.69	
Dividends, 6 per cent	$585,803.00		
Sinking Fund, 10 cents per ton, 572,469.18 tons coal	57,246.99		
Depreciation, adjustment of accounts, loss on sale of personal property and suspended debts charged off	350,547.19		
		993,597.18	
			147,818.49
Surplus (Profit and Loss and Dividend Fund Accounts) December 31, 1874			$3,302,569.14
Net income year 1875		$780,146.49	
Dividends, 8 per cent	$805,595.00		
Sinking Fund, 10 cents per ton, 397,426.13 tons	39,742.66		
		845,337.66	
			65,191.17
Surplus (Profit and Loss and Dividend Fund Accounts) December 31, 1875			$3,237,377.97
Net income year 1876		$631,962.06	
Dividends	$563,670.25		
Sinking Fund, 10 cents per ton, 606,773 tons	60,677.30		
		624,347.55	
			7,614.51
Surplus (Profit and Loss and Dividend Fund Accounts) December 31, 1876			$3,244,992.48

Summary of assets and liabilities from 1863 to 1876.

SUMMARY OF ASSETS AND LIABILITIES OF THE LEHIGH COAL & NAVIGATION COMPANY FOR 14 YEARS, DECEMBER 31, 1863, TO DECEMBER 31, 1876. (STATEMENT PREPARED FROM PRINTED ANNUAL REPORTS).

ASSETS.	Dec. 31, 1863.	Dec. 31, 1864.	Dec. 31, 1865.	Dec. 31, 1866.	Dec. 31, 1867.	Dec. 31, 1868.	Dec. 31, 1869.
Canal and River Improvements	$4,455,000.00	$4,455,000.00	$4,455,000.00	$4,455,000.00	$4,455,000.00	$4,455,000.00	$4,455,000.00
L. & S. R. R	1,389,988.37	1,917,895.35	3,127,708.42	5,691,294.05	10,342,823.20	11,146,199.23	11,625,632.65
L. & S. R. R. Equipment	.....	.....	.....	1,177,010.46	1,611,915.28	2,687,035.13	2,832,697.93
Real Estate, cost of coal mine lands, etc., Railroads to mines, other improvements, wharves and landings, etc., Philadelphia	1,729,851.91	2,072,984.50	2,037,089.72	2,299,773.30	2,959,719.46	3,102,094.51	5,726,020.94
Movable effects, debts due the Company, Bills Receivable, Bonds and Mortgages, etc	1,235,526.28	2,128,112.02	2,907,157.38	2,683,449.80	2,019,833.45	2,011,898.91	4,105,876.91
Contingent Fund, cost of Investments	680,372.02	640,952.02	680,246.58	1,056,676.08	2,352,665.05	2,235,046.16	1,064,906.78
Cash	112,771.86	165,975.86	790,116.26	175,265.62	700,044.19	162,026.67	310,647.61
	$9,603,510.44	$11,380,919.75	$13,997,318.36	$17,538,469.31	$24,442,000.63	$25,799,300.61	$30,120,782.82
LIABILITIES.							
Capital Stock	$2,479,950.00	$4,282,950.00	$6,091,700.00	$6,968,145.85	$8,739,800.00	$8,739,800.00	$8,739,800.00
Bonded Debt	2,786,681.92	2,846,881.92	3,081,433.74	5,848,508.94	12,504,297.27	14,106,521.39	16,309,691.49
Floating Debt	515,038.34	1,267,851.75	1,321,330.54	1,330,112.83	1,733,960.58	1,619,452.88	3,403,063.45
Profit and Loss	3,821,840.18	2,983,236.08	3,502,854.08	3,391,701.69	1,463,942.78	1,333,526.34	1,668,227.88
	$9,603,510.44	$11,380,919.75	$13,997,318.36	$17,538,469.31	$24,442,000.63	$25,799,300.61	$30,120,782.82

ASSETS.	Dec. 31, 1870.	Dec. 31, 1871.	Dec. 31, 1872.	Dec. 31, 1873.	Dec. 31, 1874.	Dec. 31, 1875.	Dec. 31, 1876.
Canal and River Improvements	$4,455,000.00	$3,000,000.00	$3,000,000.00	$3,000,000.00	$3,000,000.00	$3,000,000.00	$3,000,000.00
L. & S. R. R	12,153,466.30	11,989,888.45	12,463,465.43	12,754,395.17	13,046,208.81	13,232,332.90	13,718,106.26
L. & S. R. R. Equipment	2,851,140.73	.....	.....	.....	.....	.....	.....
Real Estate, cost of coal mine lands, etc., Railroads to mines, other improvements, wharves and landings, etc., Philadelphia	6,003,977.14	10,666,221.62	12,610,099.61	8,845,019.60	8,841,187.57	8,788,144.13	8,724,170.56
Movable effects, debts due the Company, bills receivable, bonds and mortgages, etc	3,437,039.08	2,889,050.65	2,927,696.99	5,620,478.14	2,126,133.47	1,115,748.00	2,162,766.77
Funded Debt assumed by C. R. R. Co. of N. J	.....	2,310,000.00	2,310,000.00	2,310,000.00	2,310,000.00	2,310,000.00	2,310,000.00
Funded Debt assumed by Honeybrook Coal Co	.....	.....	.....	1,356,000.00	.....	.....	.....
Funded Debt assumed by L. & W. B. Coal Co	.....	.....	.....	.....	1,336,500.00	1,294,000.00	1,271,000.00
Contingent Fund, cost of investments	920,024.79	949,873.58	1,041,081.53	390,550.83	295,517.47	292,366.69	279,699.48
Cash	496,956.60	235,003.28	352,694.13	234,497.69	152,145.61	177,591.32	296,134.04
	$30,317,604.64	$32,040,037.58	$34,705,637.69	$34,510,940.83	$31,107,693.13	$30,210,183.04	$31,761,877.11
LIABILITIES.							
Capital Stock	$8,739,800.00	$8,739,850.00	$8,784,850.00	$9,390,350.00	$9,949,900.00	$10,248,550.00	$10,448,550.00
Funded Debt	16,162,978.84	16,058,655.88	16,927,655.88	15,937,655.88	14,906,670.02	15,619,792.77	15,587,792.77
Floating Debt	4,135,582.67	3,486,189.73	4,991,716.18	4,892,547.32	2,665,964.28	650,627.24	1,506,116.66
C. R. R. Co. L. & S. R. R. Construction Loan	.....	.....	522,000.00	840,000.00	282,589.69	453,835.06	974,425.20
Profit and Loss	1,279,243.13	3,755,341.97	3,479,415.63	3,450,387.63	3,302,569.14	3,237,377.97	3,244,992.48
	$30,317,604.64	$32,040,037.58	$34,705,637.69	$34,510,940.83	$31,107,693.13	$30,210,183.04	$31,761,877.11

Statement, showing the dates of acquisition of the coal lands of the Lehigh Coal and Navigation Company:

"The coal lands at present owned by The Lehigh Coal and Navigation Co. consist of approximately 12,279 acres. Of this amount 9527 acres were acquired from Messrs. White, Hauto and Hazard and were never operated by any interests except The Lehigh Coal and Navigation Co. 1254 acres were acquired from the Greenwood Coal Co. in the year 1872. 101 acres from the Nesquehoning Water Co. in 1874. 83 acres from Messrs. Best, Audenried & Tower in 1882. 229 acres were acquired from George R. Kaercher in 1884. 285 acres from John P. Hobart, William Thompson and the Bank of Kentucky in the year 1889. The properties acquired from the Nesquehoning Water Co. had never been operated prior to the acquisition of the same by the Lehigh Coal & Navigation Co.

"Of the coal lands at present owned by the Navigation Co. 78 per cent have been held by the Company practically since its inception and have never been operated by any parties except the Navigation Co. or its Lessees."

Statement showing Gross Earnings Lehigh and Susquehanna Railroad, leased to the Central Railroad of New Jersey, from the years 1900 to 1913, inclusive, showing gross receipts, one-third of the gross receipts, and the maximum rental paid by the Central Railroad of New Jersey to the Lehigh Coal and Navigation Company:—

Year.	Gross Receipts.	1-3 Gross Receipts.	L. C. & N. Co. Maximum Rental Paid by C. R. R. of N. J.
1900	$5,560,897.42	$1,853,632.48	$1,853,632.48
1901	6,247,755.41	2,082,585.13	2,082,585.13
1902	5,237,584.90	1,745,861.63	1,745,861.63
1903	7,719,667.25	2,573,222.42	2,170,777.41
1904	7,611,667.09	2,537,222.36	2,192,057.59
1905	8,391,704.63	2,797,234.87	2,196,618.89
1906	8,153,734.56	2,717,911.52	2,198,182.87
1907	9,387,380.80	3,129,126.93	2,198,693.69
1908	8,387,444.03	2,795,814.68	2,198,800.41
1909	8,682,352.45	2,894,117.48	2,199,293.96
1910	9,280,995.27	3,093,665.09	2,199,883.80
1911	9,481,282.65	3,160,427.55	2,200,340.25
1912	9,920,186.48	3,306,728.82	2,200,471.82
1913	9,962,036.40	3,320,678.80	2,201,743.88
Totals	$114,024,689.34	$38,008,229.76	$29,838,943.81

(Adjourned to meet in New York City, Monday, April 27th, 1914, at eleven o'clock A. M.)

RETURN OF EXAMINER.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The United States of America, Plaintiff,	Sept. Sessions, 1913.
vs.	No. 1095.
Reading Company and others, Defendants.	IN EQUITY.

I, Charles H. Guilbert, duly appointed by the Court as Examiner to take the testimony in the above-entitled cause, either within or without this district, and to report the same to the Court, do hereby certify that, beginning, pursuant to notice, on March 17, 1914, and continuing from time to time thereafter, I have taken or caused to be taken and recorded all the testimony of the witnesses produced and the exhibits offered on the part of the defendants, on the examination in chief, as well as all the proceedings connected therewith, the signing of the testimony by the witnesses respectively being waived by counsel; and that the foregoing is a complete and true record of all such testimony, exhibits, and proceedings, the same beginning with the proceedings before the Examiner on March 17, 1914, and ending with the proceedings on April 20th, and including all the exhibits offered by defendants.

In Witness Whereof I have hereunto set my hand this 24th day of April, 1914.

C. H. GUILBERT,
Examiner.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

No. [redacted]

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY ET AL.

FILED DECEMBER 15, 1915.

No. [redacted]

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

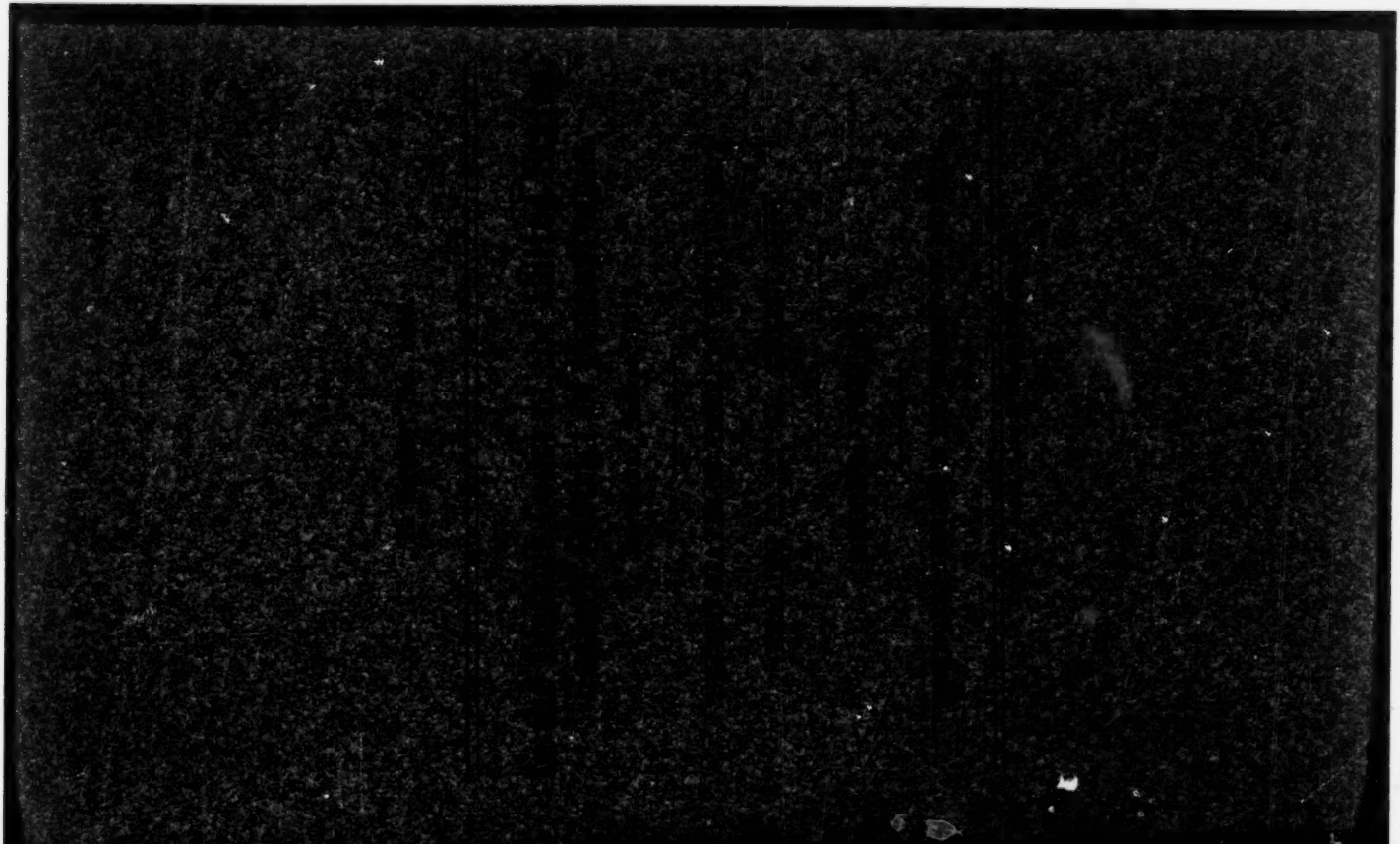
FILED JANUARY 4, 1916.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

VOLUME IV.

PETITIONER'S EVIDENCE AND EXHIBITS IN REBUTTAL.

(25052)
(25071)



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In the District Court of the United States, Eastern District of Pennsylvania.

SEPTEMBER TERM, 1913. No. 1095.

IN EQUITY.

The United States of America, Petitioner,

vs.

Reading Company, Philadelphia & Reading Railway Company, The Philadelphia & Reading Coal & Iron Company, The Central Railroad Company of New Jersey, The Lehigh & Wilkes-Barre Coal Company, The Lehigh Coal & Navigation Company, Wilmington & Northern Railroad Company, Lehigh & Hudson River Railway Company, Lehigh & New England Railroad Company, George F. Baer, George F. Baker, Edward T. Stotesbury, Henry C. Frick, Peter A. B. Widener, Henry A. DuPont, Daniel Williard, Henry P. McKean, and Samuel Dickson, Defendants.

PETITIONER'S REBUTTAL EVIDENCE.

RETURN OF EXAMINER.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The United States of America, Plaintiff,	Sept. Sessions, 1913.
vs.	No. 1095.
Reading Company and others, Defendants.	IN EQUITY.

I, Charles H. Guilbert, duly appointed by the Court as Examiner to take the testimony in the above-entitled cause, either within or without this district, and to report the same to the Court, do hereby certify that, beginning, pursuant to notice, on April 27, 1914, and continuing from time to time thereafter, I have taken or caused to be taken and recorded all the testimony of the witnesses produced and the exhibits offered in rebuttal on the part of the petitioner, on the examination in chief, as well as all the proceedings connected therewith, the signing of the testimony by the witnesses respectively being waived by counsel; and that the following is a complete and true record of all such testimony, exhibits, and proceedings, the same beginning with the proceedings before the Examiner on April 27, 1914, and ending with the proceedings on , and including all the exhibits offered by Petitioner.

In Witness Whereof, I have hereunto set my hand this 15th day of May, 1914.

C. H. GUILBERT,
Examiner.

Meeting held at No. 2 Rector Street, New York, 2419
Monday, April 27th, 1914, at 11 A. M.

Present—The Examiner; Messrs. Coudert and Kingsbury, Special Assistants to the United States Attorney, for the Government; Mr. Reynolds, for the defendants.

PETITIONER'S REBUTTAL EVIDENCE.

Supplementing the Extracts from the records of the Central Railroad of New Jersey which were put in evidence during the defendant's case, Government's counsel offer in evidence extract from the Report of the Commissioners named by the Legislature of the State of New Jersey in the Act incorporating the Somerville and Easton Railroad, passed February 26th, 1847, being from pages 13, 14 and 16 of such report, as follows:—

"COAL TRADE.

Should the company deem it expedient to go immediately into the transportation of coal, the profits would be greatly increased at once. It is confidently believed that the transportation of coal alone over this road, would pay 2420
a handsome dividend on its cost, without the aid of receipts from passengers, and other freights. Contracts can be made with responsible individuals for as much coal as can be transported on the road as soon as it is completed to Easton.

During the past year, the anthracite coal mined in the State of Pennsylvania, amounted to the very large sum of 2,312,514 tons. The consumers of coal in the City of New York, and eastwardly, ought no longer to be deprived of a direct communication with these coal regions.

The wants of the community demand some further facilities for the transportation of this necessary article for manufacturing and other purposes. No other route can compete in this trade with the Somerville and Easton Railroad, and it may with truth be said, *necessity* demands its immediate construction for the purpose. A trip may be made from Easton to Elizabeth Port and back in one day, and allowing the same time to go to and return from the mines at Mauch Chunk, the whole trip could be made in two days between Mauch Chunk and Elizabeth Port.

The annexed statistics, taken from a pamphlet published within six months past, setting forth the coal trade of Pennsylvania, and the importance to the City of New York, of opening to it a railroad communication, together with the map annexed, will exhibit in a very
2421 strong point of view, the value and advantage of this road as connected with this trade.

DISTANCES BY A CONTINUOUS LINE OF RAILROADS FROM DUNKIRK ON LAKE ERIE TO ELMIRA, AND THENCE THROUGH THE BITUMINOUS COAL FIELD, IRON REGION AND ANTHRACITE COAL FIELDS OF PENNSYLVANIA, TO THE CITY OF NEW YORK, WITH ESTIMATE OF COST FROM ELMIRA TO SEABOARD.

	Miles.	Estimate of Cost.
Dunkirk, on Lake Erie to Elmira, ¾ graded	192	
Elmira to Ralston, surveyed, &c.	49	$1,500,000
Ralston, in the bituminous coal field, in Williamsport, finished	26	500,000
Williamsport to Catawissa, as surveyed and estimated by E. Miller, into the iron region, surveyed	45	1,500,000
Catawissa to Beaver Meadow Railroad, through the anthracite coal fields, graded and bridged	48	1,200,000

Estimate to finish this 48 miles with heavy iron rails	....	$500,000
Beaver Meadow Railroad, now in daily use, part of which will form a link in this chain of improvements, say about	16	500,000
The Delaware, Lehigh, Schuylkill and Susquehanna Railroad, from Perryville to Easton, chartered in 1846, and estimated at	40	1,200,000
The Somerville Railroad, as surveyed by Moore, engineer, from Easton to Somerville, and estimated at (including running force)	36	1,600,000
Somerville to Elizabethtown Point, finished	26	500,000
	478	$9,000,000

ANTHRACITE COAL FIELD OF POTTSVILLE OR SCHUYLKILL COMPANY. 2422

RENTAL TO LANDED PROPRIETORS.

Twenty-five cents to 50 cents per ton, say	$0 30
Mining	1 00
Branch Railroads 10 miles, at three cents per mile	0 30
Reading Railroad to Philadelphia, 93 miles	1 60
Dumpage, &c	0 10
	$3 30
Freight, Philadelphia to New York	1 00
Actual cost exclusive of profit to operators, agencies, &c	$4 30

ANTHRACITE COAL FIELD CONNECTED BY PROPOSED LINE OF ROAD, VIZ.:

BEAVER, MEADOW, HAZLETON, AND LEHIGH REGION.

Mining, Rental, Branch Railroads and Dumpage, same as above	$1 70
Railroads direct to New York from coal region—main line 118 miles at 1½ cents per ton per mile as above	2 00
	$3 70

BEING 60 CENTS PER TON IN FAVOR OF THE PROPOSED DIRECT CONTINUOUS LINE OF RAILROADS FROM NEW YORK TO THE SAID COAL MINES. NO GRADE EASTWARDLY OVER 26 FEET PER MILE."

2423 Government's counsel also offer in evidence extracts from the report of 1873 of the Central Railroad of New Jersey from page 14 and pages 15 to 19, as follows:—

"COAL SUPPLY.

The efforts of the company have been steadily directed to securing a steady, reliable supply of coal from sources within their own control, independent entirely of other companies; and also to securing proper markets for the coal transported. In both, their success has been very gratifying, and every year is likely to place this their most important business on a firmer basis. It is easy to see also that the substitution of a smaller tonnage over the entire length of the roads will give a better return and at less expense than a larger tonnage over a part only of one road.

CONTRACT WITH DEL., LACK. AND WESTERN R. R. CO.

In the postscript of the last Annual Report, it was announced that an agreement had been entered into, on the 16th of March, for consolidating and uniting the interests of this Company and those of the Delaware, Lackawanna and Western R. R. Co., and the agreement was set out in full. Subsequently it was submitted to

the stockholders for approval, and with the greatest difficulty the assent of three-quarters in interest was obtained. From the first it was extremely unpopular, owing mainly to distrust of the motives and management 2424
of the Delaware, Lackawanna and Western R. R. Co. Unfortunately, this distrust was justified by experience.

At the very outset of the meetings of the Joint Committee dissensions began. The financial condition of the Delaware, Lackawanna and Western R. R. Co. was unexpectedly found to be such that an immediate issue of $3,000,000 convertible bonds by their Company was *demanded*, and had to be acceded to. After the bonds were all sold, and proceeds expended by them, that Company still showed a very large amount of liabilities. Without charging deception, it is safe to say that no such state of urgent indebtedness had been exhibited to our committee.

Nor was this all. In addition to the formal terms of the contract for merger, it is natural to suppose that the representatives of two such large interests would have some definite understanding, in advance, about the organization and general policy of the united companies. To suppose anything different is an insult to the common sense of all concerned. It was soon found, however, that the understanding on the subject of permanent organization either did not exist or was not to be recognized. A committee on organization was appointed with a prominent Lackawanna Director as Chairman. Finding the committee to be in favor of the organization proposed by the Central, he refused for six weeks, 2425
to call a formal meeting, and only then consented with the understanding that they should disagree and be discharged—which was done. In matters of policy there was the same lack of accord. Auction sales of coal were obnoxious to the trade generally and objected to by the Central. It was understood that this was to be an open question; on the contrary the sales went on without consultation, and accelerated the fall in prices. Instant steps were to have been taken to secure the removal of the broad-gauge rails from the two roads.

Instead, the only anxiety shown was to extend the broad-gauge over the Central from Elizabeth to Jersey City; and though resolutions were passed in the Committee looking to the substitution of the narrow-gauge, the change was practically deferred to some unknown period. Annual reports to stockholders and quarterly dividends were tolerated for the present, not adopted. In fact it was soon evident to the Central Directors that it was expected that Lackawanna principles should supersede those on which the Central had been so successfully managed. Having gone into the union, however, they were most earnestly desirous to carry it out. Repeated and persistent efforts were made to reconcile matters, but without any result. The only reply to warnings that the union would be dissolved was: 'You can't get out of it; you are fast.' After exhausting every effort for harmony, the Central Directors decided to
2426 avail themselves of organic lack of power, and other good grounds, for annulling the contract (which had never really gone into operation, with the exception of meetings of the Joint Committee), and the final rupture took place on the refusal of the Committee to allow the regular quarterly dividend to be made in October. Then it was that, for the first time it was discovered by our counsel that, owing to a failure to record the agreement, it was, by statute, invalid and of no effect. Though a technical ground, yet, as one from which there was no escape and which gave immediate relief, it was used in the litigation which followed, with the result of a prompt decision in the Company's favor on the above ground, though on a collateral issue. The question of a re-execution of the contract was then submitted to the stockholders, when 112,610 shares voted against it, while only 5,917 voted in its favor. Notice of the result was given to the Delaware, Lackawanna and Western Railroad Company, and the union finally ended so far as this Company was concerned. Litigation, however, continued, and the whole matter has been taken up to the Court of Final Appeals, where it will be heard and decided at as early a day as possible. After

the Central had withdrawn from the agreement by the above decisive vote, and while the matter was pending in the highest Court, an attempt was made by Act of the Legislature to validate the agreement, 'any law to 2427
the contrary notwithstanding.' The Act was forced through, without debate and without a hearing. In the opinion of our Counsel, 'the Legislature can pass no law that will stand; the very law must show the contract to have been void, and the stockholders at liberty to reject or adopt it; and, if three-quarters did not agree to it, the Legislature cannot make a valid contract for the Company.' In this opinion any lawyer will concur.

During this unpleasant controversy the Board have been united on every point. No variation of opinion has occurred, and each step taken has been fully sanctioned by the judgment of every director; and if they were unanimous in recommending the union, they were much more heartily so in their action for annulling it. It is just also to add, that it was the earnest desire of the chief executive officer of this Company to retire, hoping thus to end a part of the difficulties, but the Board objected unanimously to entertaining the proposal.

The damage to both companies from this controversy and litigation has been considerable. The market prices of the stocks have been materially affected, and money negotiations interfered with. Had matters gone on as originally expected, it is still thought that, even with the large floating debt of the Lackawanna, the consolidation would have been a good thing for this Company. As matters turned out, however, there was 2428
no course open to, or desirable for this Company, but the one pursued.

Thus ended in six months a contract meant to be perpetual. In December the contract of 1854, also meant at the time to be perpetual, but which had been openly and persistently violated by the Delaware, Lackawanna and Western Railroad Company, was formally annulled by this Company, and a final suit for heavy damages begun. The attempt at union has ended in a total division."

Government's counsel also offer in evidence from the Report of the Central Railroad of New Jersey for 1875, from pages 16 to 18, the following:—

"Review of Five Years.

The directors desire to call the attention of stockholders to the changes that have been made in the Company's position during the five years ending January 1st, 1875—what that position was, what it is, and what the results of these changes have been, on the gross and net revenue—that they may judge whether success, the usual test of merit, has followed those outlays.

It will be observed, by examining the annual reports, that in these five years the Company have risen from simple carriers of other people's coal, over a railway 75 miles long, with an equipment calculated for that dis-
2429 tance alone, into the owners or controllers of 180 miles of main road, with numerous branches, reaching from the seaboard to the finest centres of anthracite coal; the whole fully equipped with the best rolling stock, in the most perfect order; and also that they have become the owners of a controlling interest in an immense body of coal lands fully competent to supply them with transportation for centuries to come, independent of all other interests. The *safety* of their present position must be obvious to every one.

The coal tonnage of the Central Division has only increased from 1,556,052 tons to 2,383,869 tons; but the former amount was carried for comparatively short distances, being received, in about equal quantities, at Phillipsburg from the Lehigh Valley Railroad, and at Hampton Junction from the Delaware, Lackawanna and Western Railroad; while the latter amount has been mainly due under the complete control of the Company and carried over the entire length of the Lehigh and Susquehanna Division as well as of the Central Road.

The result is, that in five years the gross earnings have increased from $4,010,121 to $8,589,631, while the net earnings have risen from $1,367,958 to $4,449,029. This may fairly be styled a splendid issue. Much of the suc-

cess in keeping down expenses has been owing to the substitution of steel rails for iron, and fully as much to 2430
the careful maintenance of roadway and rolling stock in first-class condition. These two things begin now to tell forcibly on the annual net revenue.

The changes made in five years in the investments of the Company, as shown by a comparison of the balance sheet given in the report of January 1st, 1870, with that of the present report, are as follows:—

Capital Stock, increase	$5,000,000 00
Bonded Debt, increase	12,607,900 00
Bonds of other companies assumed	3,240,723 41
Undivided Profits expended	1,127,879 77
Total	$21,976,503 18

This increase in stock, bonds and liabilities is represented by the following increase in assets:—

Railroad—grading third and fourth tracks; laying tracks and sidings; Perth Amboy Branch; additional cost Newark Branch; excess of cost of steel rails over iron	$3,800,871 91
Expenditures at Jersey City	355,805 50
Port Johnson Coal Station	175,221 08
Station houses, shops, etc	113,400 20
New Engines	1,560,000 00
New passenger cars	415,000 00
New freight cars	725,000 00
New coal cars	3,105,000 00
Lehigh and Wilkes-Barre Coal Co. Stock	5,780,138 26
Lehigh and Wilkes-Barre Coal Co. Bonds	4,500,000 00
Accounts receivable—increase, less accounts payable	1,242,066 23
Total	$21,976,503 18

2431 While $4,449,298.69 have gone into the road, branches, buildings and other improvements attached to the freehold, the equipment has absorbed $6,005,000, being mainly for stocking the Lehigh & Susquehanna Division. The coal-land purchases have taken $5,780,-138.26 and $4,500,000 have been temporarily invested in the Coal Company Bonds. All these investments, whether in road, equipment or coal lands, are believed to be well and judiciously and profitably made.

By Order,

JOHN TAYLOR JOHNSTON,
President.

Office Central Railroad Company of New Jersey, February, 1875."

Government's counsel also offer in evidence, supplementing the extracts from the testimony of Charles E. Henderson in the record of the old suit read in evidence by the defendants, further extracts (pages 595 to 598, Volume 4), as follows:—

"Q. You made the freight rates upon anthracite coal for the Philadelphia and Reading Railway Company while you were with it? A. They were made under my direction.

Q. With whom did you consult about those rates? A. With the president of the company. They were comparatively few changes in them.

Q. What effect did the rates which were being observed
2432 by the railroads from the other anthracite districts have on the rates from the district served by the Philadelphia and Reading Railway? A. We could not maintain a higher rate than the other districts and treat our operators justly, and we could not take a lower rate than the other districts and treat our own companies justly, so that naturally all the rates came practically to the same basis. They were not in all cases exactly the same, but substantially they were the same.

Q. Why could you not charge a higher rate than was charged by the railroads reaching the other anthracite districts? A. Because our operators could not mine their coal cheaper than other operators could, and they would be at a disadvantage as compared with them.

Q. Why could you not charge a less rate than they did? A. Because we did not want to lose the money.

Q. Then the condition was such that, in a trade way, the competition existing between these various regions necessitated, you think, that the freight rates upon all the roads should be substantially the same? A. That would seem to be equitable to me.

Q. And was that the fact? A. That they were the same?

Q. No, was that the reason why it was necessary to make them the same, because of the competition existing between the coals moving from the various regions? A. There was a competition as to markets, as to prices of coal. If an operator in our region paid a higher rate, 2433 he could not naturally compete on an equality with another from another region who paid a lower rate.

Q. Is your line the shortest line from any anthracite coal region to tidewater at New York, or did you have the longest line? A. We had shorter lines than some and longer lines than others.

Q. What was the longest route over which you carried coal at the ordinary published price to tidewater at New York? What mine in your district was the farthest from tidewater? A. North Franklin Mine. It came around by the Reading Road to New York and was the farthest distant mine on our road.

Q. Which was the nearest mine to tidewater at New York? A. Passing over the Reading Road, the nearest mine was any one of those close to Pottsville.

By JUDGE CAMPBELL:

Q. St. Clair, for instance? A. Yes.

By MR. MCREYNOLDS:

Q. How far are the Pottsville mines from tidewater? A. You mean New York tidewater now?

Q. Yes. A. If I remember that distance, one hundred and seventy-six miles.

Q. How far is it to the North Franklin, the farthest mine from New York? A. About fifty miles further.

2434 Q. Which was the most expensive haul? A. From North Franklin.

Q. Was there any reason except distance why it was the most expensive haul? A. Yes, there were grades and planes and other reasons why it was a more expensive haul from North Franklin.

Q. Why did you haul coal from the North Franklin Mine at the same price that you hauled coals from the mines near Pottsville? A. That had been a practice that had been in effect almost from time immemorial, and was continued during my administration. It was supposed that, in that particular region, the collieries should all be put upon the same basis.

Q. Why was it supposed that they should be put upon the same basis? A. So as to put them on an equality as to power to do business.

Q. They were all in competition with each other, were they not, for selling their coal? A. Yes.

Q. And, in order to enable them to compete on equal terms, you thought it was proper to give them the same freight rate? A. That had been the practice for years.

Q. Did you make any difference in the rate which you gave to mines the output of which was more valuable than the mines which had a less valuable output? A. We did, in one instance. The Lykens Valley collieries had for a time a higher rate than the other collieries.

2435 Q. But you did away with that when? A. I think that was 1906.

Q. Before your freight rates were made, was your president accustomed to confer with the presidents of the other coal carrying roads? A. As to the rates?

Q. Yes. A. I do not think he did. I do not recall his doing it.

Q. You and he always had information about what those rates were to be before you made a change in your

schedule? A. We always got tariffs of other roads. All roads interchanged with each other.

Q. When changes were made, were they made by all the roads leading into the coal regions at the same time? A. If they found it out, they would be likely to do it. I do not think one would let another make a lower rate than he did, if he knew it.

Q. Why not? A. Because he would think the other fellow would get an advantage over him.

Q. How would he get an advantage over him? A. He would increase the volume of his business at the expense of the others.

Q. How would that come about, practically, I mean? A. By having an advantage of lesser cost.

Q. We are not railroad men, and we would like you to tell us how that in practice would work out. How would he increase his traffic by lowering his rate, at the 2436
expense of the other carrying roads? A. Take a simple illustration outside of coal ——

Q. No, let us stick to coal. A. Take wherever there is a competition as to business, the fellow that sells at a lower price for the same goods will get the greater volume of busines, I take it, or the fellow that has an advantage over another."

Government's counsel also offer in evidence, supplementing the extract from the testimony of George F. Baer in the old suit, further extracts therefrom (page 1205, Volume 5), as follows:—

"You generally vote the entire capital stock of the Philadelphia and Reading Railway Company at the annual meeting, do you not. A. The Central Trust Company of New York, which is the trustee in the mortgage, supplies the voting power, and they execute the proxy, which is generally executed to me; sometimes to somebody else, if it is not convenient for me."

Government's counsel also offer in evidence from the Agreed Statement of Facts as to the Reading Companies

in old record (pages 605, 606 and 607, Volume 2), the following:—

2437 "Concerning Reading Company, Philadelphia and Reading Railway Company, The Philadelphia and Reading Coal and Iron Company and Related Corporations.

It is agreed that it may be taken as proved on behalf of the United States, subject to objections as to relevancy or materiality or competency, but not as to the form or method of proof:—

1. That by virtue of an Act of the general assembly of Pennsylvania, approved April 4, 1833 (P. L., 1832–33, page 144), The Philadelphia and Reading Railroad Company was created a corporation to construct and operate a railroad: 'Beginning at or near the borough of Reading, in Berks County, and terminating at some suitable point in or near the city of Philadelphia,' that by Act of the general assembly of Pennsylvania, approved March 19, 1838 (P. L., 1837–38, page 148), The Philadelphia and Reading Railroad Company was authorized to extend its railroad to Pottsville, and by an Act approved April 12, 1864 (P. L., 1864, page 396), was authorized 'to make such lateral railroads or branches leading from the main line of their said railroad to such convenient place or points in either of the counties into or through which the said main line of their road may pass as the president and directors may deem advantageous and suited to promote the convenience of the inhabitants thereof
2438 and the interests of said company;' that The Philadelphia and Reading Railroad Company neither by its charter and supplements nor by any general law was authorized expressly or otherwise to acquire coal lands or mines or to operate such mines or to vend coal, though through the special charters of certain of the merged and leased lines forming part of The Philadelphia and Reading Railroad system authority was given to some of the companies to mine, transport, and vend coal. Their holdings of coal and other lands were, however, at or

after the mergers or leases, conveyed to The Philadelphia and Reading Coal and Iron Company or to other grantees.

2. That acting under the before-mentioned enactments and divers other authorizing mergers and leases. The Philadelphia and Reading Railroad Company, as owner or lessee, operated as a common carrier, until divested of its property as hereinafter stated, among other lines of railroad and branches, a system of railroads and branches penetrating certain portions of the so-called east Mahanoy district of the western middle coal field in Schuylkill County, Pennsylvania; also certain portions of the so-called west Mahanoy district of the western middle coal field in Schuylkill, Columbia, and Northumberland Counties, Pennsylvania; also certain portions of the so-called Shamokin district of the western middle coal field in Northumberland County, Pennsylvania; also certain portions of the so-called east Schuylkill district, of the so-called west Schuylkill district, and of the so-called Lor- 2439
berry district, of the southern coal field, all in said Schuylkill County; also certain portions of the so-called Lykens Valley district of the southern coal field in Schuylkill and Dauphin counties, Pennsylvania, and extending thence from some of the collieries located in the said portions of the said anthracite coal fields to Philadelphia and other points, with a system of branch and leased lines extending from Philadelphia and points near there across the eastern portion of the State of Pennsylvania and through New Jersey to Port Reading Junction in the last-named State, where it connected with The Port Reading Railroad Company, which owns a line of railroad about 20 miles in length extending from Port Reading Junction aforesaid to Port Reading, a point on the waters adjacent to and connected by water navigation with New York Harbor, whereby a line was formed for the carriage, besides other traffic, of anthracite coal from some of the mines in the said regions to the said port; the said portion of the said system of railroads, with some excep-

tions not material to be noted here being now operated by the Philadelphia and Reading Railway Company, the successor to The Philadelphia and Reading Railroad Company.

3. That Laurel Run Improvement Company was created a corporation by an Act of the general assembly of Pennsylvania, approved May 8, 1871, with power to
2440 purchase, sell, and transport coal, to mine and manufacture iron, to acquire from time to time such lands as it might deem expedient, and to subscribe for and purchase the lands or stock of any other incorporated company existing under the laws of Pennsylvania, it being also provided that it should be lawful for any railroad or mining company existing under the laws of Pennsylvania to subscribe for and purchase the stock or to purchase or guarantee the bonds of the said Laurel Run Improvement Company; that December 21, 1871, by due proceedings, the name of the company was changed to The Philadelphia and Reading Coal and Iron Company; that thereafter the said The Philadelphia and Reading Coal and Iron Company entered upon the business for which it was created, and in the course thereof acquired, from time to time, before 1896, anthracite coal producing lands amounting in round figures to about 83,700 acres and also the major portion of the shares of capital stock of the following companies owning anthracite coal and other lands, named:—

Preston Coal and Improvement Company,
Fulton Coal Company,
Locust Gap Improvement Company,
Tremont Coal Company,
Mammoth Vein Coal and Iron Company, and
Delaware Coal Company,

which lands and which interest in the shares of capital
2441 stock the said The Philadelphia and Reading Coal and

Iron Company continued to hold until divested as hereinafter stated.

That the anthracite coal mined and purchased by The Philadelphia and Reading Coal and Iron Company was by it shipped to Philadelphia, New York Harbor, and other markets over the railroads of The Philadelphia and Reading Railroad Company and its connections; that the said The Philadelphia and Reading Railroad Company, at or soon after the organization of The Philadelphia and Reading Coal and Iron Company, acquired substantially its entire capital stock of $8,000,000, which it continued to hold either directly or subject to certain pledges and liens until divested as hereinafter stated."

Government's counsel desire to have noted on the record as in evidence, with the privilege to any party to refer thereto, the following decisions and reports of the Interstate Commerce Commission.

These decisions and reports are not to be spread upon the record, as in the case of other reports previously put in evidence.

The Report in No. 4851, Waverly Oil Works Company *vs.* Pennsylvania Railroad Company *et al.* Submitted May 9th, 1913. Decided December 3d, 1913.

Reports in No. 5558 and No. 5558 (Sub-No. 1), *in re* Hughes Creek Coal Company *et al. vs.* Kanawha & 2442
Michigan Railway Company *et al.* Kelly's Creek Colliery Company *et al. vs.* Same. Submitted October 17th, 1913. Decided March 9th, 1914.

Report in Investigation and Suspension Docket No. 223. Lumber Rates from Texas, Louisiana, and Arkansas to Oklahoma and Missouri. Submitted November 11th, 1913. Decided November 17th, 1913.

(Adjourned until Monday, May 4th, 1914, at 11 o'clock A. M.).

Met pursuant to adjournment at No. 2 Rector Street, New York City, Monday, May 4th, 1914, at 11.00 A. M.

Present—The Examiner; Messrs. Coudert, Kingsbury and Gordon, for Government; Messrs. Reynolds, Heebner and Turner, for Defendants.

Mr. Reynolds notes of record that George F. Baer, one of the defendants, died on April 26th, 1914.

William Griffith, having been duly sworn, was examined as follows:—

By Mr. Coudert:

Q. Will you kindly give your name and address? A. William Griffith; I live in West Pittston, and my business office is in Scranton, Pennsylvania.

Q. What is your business or profession? A. Mining engineer and geologist.

Q. You have been a geologist for some years? A. Yes, sir.

Q. How many years? A. Since about 1883, along there. I started working on an engagement with the Geological Survey of Pennsylvania.

Q. You have been a practical mining engineer? A. Yes, sir.

Q. You have actually mined in coal mines? A. Yes, sir.

Q. What coal mines? A. Pancoast Coal Company, and, in the early part of my practice, I did general mining engineering work at Scranton, and surveyed mines, when called upon by different people, and I was president of a coal company at one time. I did not handle the business, of course, but we had a mine and operated it for a number of years. Then, in addition to that, you know, I have been continually engaged in doing consulting work and expert work of various kinds in and about the mines, and examining mining properties, &c., in a geological way.

Q. So that you are thoroughly familiar with the methods of practical mining? A. Yes, sir.

Q. Did you assist in the Pennsylvania State Geological Survey? A. Yes, sir.

Q. If so, in what capacity and under what circumstances? A. I started in as one of the assistants at Pottsville; was engaged there for a while doing work in both the Southern field and the Western Middle field, was then transferred to Hazleton and was engaged in work in the Hazleton region, Lehigh region, and after that was transferred to Bernice, and engaged in making a topographical survey of the Bernice coal field.

Q. You had charge of the work there? A. Yes. There was another man had charge of it before I did, but he left when I went there, and I took charge of the balance of the work. Then subsequently I had the immediate charge of the geological survey of all of the Northern coal field, north of Wilkes-Barre.

Q. Will you please describe carefully the work of the survey? A. That survey was done in a very complete and a very careful way, requiring the work of several engineer corps, comprising altogether from a dozen to twenty men, for several years. The maps were made on a large scale, and were very carefully compiled from the official surveys of the various coal corporations and mining companies that were operating in the field; and, where those surveys and maps and so on did not connect, the Survey made their own individual surveys to connect them up and to supply all omissions.

Q. Did they accumulate all the information extant and put it in record form? A. All the information that it was possible to secure, not only the topographical surveys, but geological surveys of the whole region, showing the outcrops, as far as possible, the dips of rocks, the inclinations of the beds; the actual mine maps themselves were placed on these maps, showing all the chambers, &c., so far as were able to obtain them, and, where we were not able to obtain them, we put on them the maps in the same condition that the companies had them.

Q. You obtained that data from the companies? A. Yes, sir.

1517

Q. Did you obtain pretty full data from the companies? A. Very full, and, where we did not obtain full data, it was written on the map, explaining it, that it was not full, and why. Then the surveys also included geological cross-sections of the coal measures at different points, at different intervals. They also included columnar sections, showing the number, thickness and distance apart of all the coal veins in different portions of the basin.

Q. Were you a member of the Pennsylvania Coal Waste Commission, in 1893? A. Yes, sir.

Q. What was your function in connection with that Commission? A. We were to make a report on the kind, quality and quantity of the waste of anthracite coal of the State of Pennsylvania, and, in doing that, we compiled statements of the various quantities and amounts and kinds of waste, the uses to which this waste might be put, methods that were then known for saving it, and methods that were in process of trying out. We made lists of all the patents that had been made for manufacturing various sorts of artificial fuels, made estimates of the probable total original content of the anthracite coal field—employed an engineer to make that—and from that we deduced the probable amount of coal that would be won.

Q. How many members were there of that Commission? A. There were three. Two of them died, and then two others were appointed in their places.

Q. Were you employed by anybody as an expert to make an estimate of anthracite mineable coal, which estimate appeared in the Bond Record of 1896? A. I was employed by the Bond Record Publishing Company, or at least by Harvey Fisk & Sons, to make an estimate of the shipable coal—not the mineable coal, but the amount that could be shipped out of the coal region—for the Bond Record Publishing Company.

Q. Was that estimate of shipable coal re-published in any other banking magazines or papers of any kind? A. They published copious extracts from it. I do not know that the detailed estimate has ever been re-published.

Q. Do you know whether anybody purchased a large number of copies of the article? A. Yes, sir; I was told so by the Publishing Company.

Q. Did J. P. Morgan & Company buy any? A. Yes, J. P. Morgan & Company bought a thousand copies to help the Reading System in its finances.

Q. Has that estimate, which you made in 1896, been used in any Government publications? Has it been published by the Government? A. It was used by the writer of the articles on anthracite coal, published by the United States Geological Survey, and extracts from it have been used from time to time.

Q. Was it used by the Anthracite Coal Strike Commission? A. Yes, the Anthracite Coal Strike Commission made use of it, and what you might call a revamping of that report, to bring it down to date, in connection with Mr. Smith's, was used recently by the Commissioner of Labor of the United States in compiling some labor statistics, or some work in connection with the anthracite coal.

MR. GORDON:—The witness refers to House Document No. 1442, Sixty-second Congress, third session, being a pamphlet entitled "Increase in Prices of Anthracite Coal following the Wage Agreement of May 20, 1912."

By MR. COUDERT:

Q. Are you connected with the United States Bureau of Mines? A. I have been called in as consulting engineer from occasion to occasion by them.

Q. Have you prepared articles for the proceedings of the International Congress of Applied Chemistry, at the request of the Director of the United States Bureau of Mining? A. Yes, sir, that is the article that I have reference to, that was used by the Commissioner of Labor.

Q. Have you been called upon by the Court to arbitrate tax assessments on coal lands, in the coal region? A. Yes, sir.

Q. What became of your award; how was it treated by the Court? Was it upheld by the Court, or modified? A. The local Court, I believe, increased some of the

findings and the matter was appealed eventually to the Supreme Court of the State, and our findings were upheld then by the Supreme Court.

Q. Have you at times testified as an expert, for any individuals or corporations? A. Yes, sir, occasionally.

Q. Have you been retained by any railroads and coal mining companies for that purpose? A. Yes, at various times.

Q. Have you ever been retained by the Philadelphia & Reading Coal & Iron Company? A. Yes, sir, the early part of this year; January and February of this year.

Q. To testify in what kind of a proceeding? A. Tax assessment cases in the anthracite coal fields.

Q. Did the Pennsylvania Survey, of which you have spoken, collect data from which it was possible to make a fairly accurate estimate of coal in the ground? A. Yes, sir. It is the only basis upon which anything like a reasonable estimate can be made.

Q. Without availing one's self of that data, a reasonable estimate could not be made? A. No, it would be simply a generalized estimate, would not be in any way a detailed one.

Q. When you made your estimate of 1896, did you endeavor to make it conservative or liberal? A. Conservative—very conservative. That was the basis on which I was employed, that the estimate should be conservative, based on the experience as to the art of mining and preparing and using coal at that time, making no allowances for improvements for the future.

Q. You made no allowance for improvements in the art of mining at all? A. I made some little, yes. The idea was to get a fair, conservative estimate of the tonnage which could be shipped from the coal fields, as a basis of revenue for the railroads.

Q. Has the percentage of recovery of anthracite increased very considerably during the years from 1895 to 1912? A. Yes, sir, very.

Q. About how much in percentage, for instance? A. It has increased from 50 to 100 per cent., and perhaps

in some cases more. The tax assessors in Luzerne and Lackawanna Counties estimate anywhere from 800 to 1400 tons per foot per acre now, as available production, and they also estimate the veins as thin as two feet as minable now.

Q. Which was not formerly the case? A. Oh, no. We stopped at about four feet, when this estimate was made, in the Northern coal field.

Q. And you did not base on any vein less than four feet? A. No.

Q. Do they now use sizes of coal smaller than they did heretofore? A. Yes, sir. At that time there were a great many culm piles all over the region that were just about beginning to be utilized, and since that they have re-worked most of these culm piles that are available and shipped the small sizes away to market; and, of the coal that has been mined since that, all of the small coal has been utilized and shipped to market. It increases the tonnage very greatly.

Q. Have they been recovering coal from the so-called culm banks? A. Yes, that is what I say.

Q. And that has greatly increased the output? A. Yes, sir.

Q. Has there been any saving in connection with the coal pillars, over the old practice? A. In many places they have been robbing pillars, that is to say, re-working the old mines, and that is one of the things that I left out of my estimate.

Q. The possibility of cutting down——A. Yes, the possibility of cutting down and re-working old mines, although a great deal of coal has been obtained from that source.

Q. Did you include in your estimate the amount set aside for local consumption? A. No, sir.

Q. Why did you leave that out? For any particular reason? A. Because it did not afford any tonnage for the railroads, and my estimate was for the railroad tonnage.

Q. So you did not leave out ten per cent., or anything

else, for local consumption? A. No, I dealt with the shipments only. In making my figures for the quantity of coal to be obtained, I dealt with shipments and cubical volume of the mines only.

Q. Do you know one A. D. Smith? A. A. D. W. Smith, yes, sir.

Q. Did he make an estimate? A. He did. He made an estimate, was employed to do it by this Coal Waste Commission.

Q. Is he an expert in coal matters, to your knowledge? A. Yes, sir. He was at that time just finishing his work as geologist in charge of the Geological Survey of the Southern coal field, then having headquarters at Pottsville.

Q. Have you critically studied his estimate? A. Yes, sir.

Q. Does that deal with production or with shipment? A. That dealt with production. It dealt primarily with the quantity of coal originally in the ground, total quantity, and from that he deduced his estimate of what proportion of it might be won.

Q. Did it include thinner veins than those that you have included? A. Yes, sir. I believe he included in the Northern field veins as thin as three feet, and in the Schuylkill region veins as thin as two and a half feet.

Q. And did he include the recovery from culm piles and mine pillars? A. Yes, he made estimates of those.

Q. Allowing for those factors that you have mentioned, how close do you find that his estimate and yours would come, about? A. Mine was a good deal less than his; I do not know just how close.

Q. Have you any memorandum of a comparison of the two, to show about how close the two would be? If you have any data, you may consult it. A. Yes, I have it right here. (Referring to memorandum.)

MR. REYNOLDS:—Just read the date of Mr. Smith's estimate, when you put it in.

MR. COUDERT:—1893, I should have said.

THE WITNESS:—Mr. Smith's estimate, made in 1893,

was a liberal estimate, including local consumption and coal beds in the Northern field two and a half feet thick.

By Mr. Reynolds:

Q. In the Northern field two and a half feet? A. Yes, two and a half feet thick through beds, and in the other fields two feet. I said three feet in the Northern field; two and a half, it is. I have here in this note two and a half feet thick in the Northern field, and two feet in the other. It amounted to 6,898,000,000 tons. My estimate, intentionally conservative, including railroad shipments only, excluding local consumption and including no beds thinner than four feet in the Northern field and three feet in the Schuylkill region, including culm piles and the possible production from mine pillars, was 5,073,786,750. That would be about something more than five-sevenths of Smith's estimate.

By Mr. Coudert:

Q. How close together in percentage would that bring the two estimates? What I want is this: suppose in your estimate you had included those factors which Mr. Smith put in and which you left out; how close together would the two estimates then come? They would be within 5 per cent. of each other, would they not? A. I could not tell that from this book. That would be given in the paper before the Chemical Congress.

Q. You did make a comparison of the two estimates, Smith's estimate and your estimate, in this communication to the International Congress of Applied Chemistry, did you not? A. Yes, sir.

Q. I show you a photographic copy, and ask you if that was the communication that you made, comparing the two sets of figures? A. Yes; this is a photograph of it. These papers show the estimates right here in figures.

Mr. Coudert offers in evidence the communication referred to, as follows:—

"Production, Reserve and Waste.

So thoroughly have the fields been exploited during the progress of the mining operations that the area and

extent of the various coal beds is known with considerable exactness, and careful estimates have been made of the original contents and future resources of the field. Two very elaborate and painstaking estimates employing widely differing methods of computation, are particularly worthy of mention, one of which was made in 1893, by Mr. A. D. W. Smith, of Wilkes-Barre, Penna., and the other in 1895, by Mr. William Griffith, of Scranton, Penna., both of whom, having been engaged upon the Geological Survey of the State in the Anthracite coal fields, possessed exhaustive information as to the geological conditions and the state of the art of mining, preparing and utilizing anthracite coal.

The estimate of Mr. Smith had reference particularly to the original content of the coal field before mining began, and from it as a foundation he computed the quantity of unmined coal remaining at that time. His estimate was published in full in the Report of the Pennsylvania Coal Waste Commission, in May, 1893, and was intended to be liberal according to the mining practice of that day. It included not only the shipments, but the coal burned at the mines, and consumed locally. It included in the Northern field, coal beds 2½ feet in thickness; that is to say, containing 2 feet of clean coal. And in the other fields, beds two feet thick; that is to say, containing 1.44 feet of clean coal and what might be saved from culm piles and mine pillars. Mr. Smith estimated the original content of the Pennsylvania fields before mining began, at 19,500,000,000 long tons, and the available reserve at 6,898,000,000 tons.

The estimate of Mr. Griffith, made in 1895, and published in the Bond Record, New York, was upon an entirely different basis of calculation and for another purpose, being intended as a conservative estimate to ascertain the quantity of export coal which the Anthracite Coal Fields of Pennsylvania might supply for tonnage to the various railroads, and it did not include the coal burned at the mines or consumed locally. Neither did it include any coal in beds less than four feet thick; that

is, three feet of clean coal in the Northern field; or three feet thick, that is, 2¼ feet of clean coal, in the other fields. It excluded all coal in culm piles and mine workings. His estimate of available reserve for export was 5,073,786,750 tons.

Re-drawing the latter estimate to conform to the more liberal lines of the former, and combining the two, to construct a new estimate having in view the recent progress toward conservation through modern improvements in the art of mining and using the coal, we have prepared the following tabulation, which we beiieve accords more closely with latest tendencies of mining practice.

Q. Is the Schuylkill region larger in area than both the other fields together? A. Yes, sir, I think it is. I will tell you in a moment.

Q. I show you something taken from the same document showing the percentages of area, both mathematically, in measurement, and in diagram, and ask you if you made those and if they are correct. A. Yes, sir.

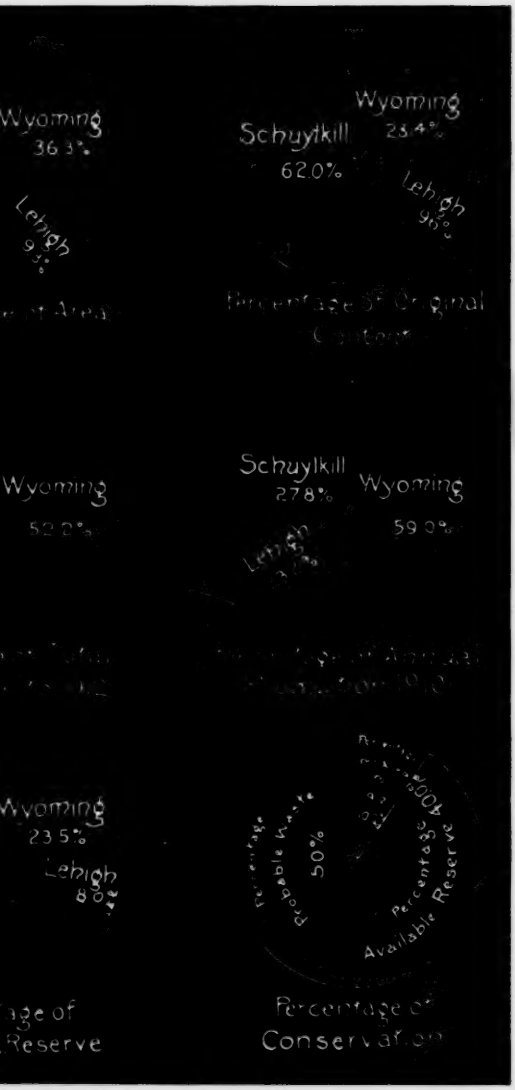
Mr. Coudert offers in evidence the diagrammatic percentage statement referred to, as follows:—

PENNSYLVANIA ESTIMATE OF ANTHRACITE PRODUCTION AND RESERVE, 1912.

Region.	Estimator.	Area, Sq. Miles.	Approximate Original Content. Long Tons.	Approximate Produced to Jan. 1, 1912.	Approximate ¼ Wasted and ¾ Left in Old Mines to Jan. 1, 1912.	Approximate Reserve Coal in Unmined Area.	Approximate Future Production Based on Saving of			Production, 1910. Long Tons.	Duration of Available Supply at Present Rate of Exhaustion.	Estimated Ultimate Waste of Mining.
							25% from Old Mines.	50% from New Mines.	Total Available.			
Wyoming and Lackawanna	Smith	176	5,700,000,000	.....	1,520,000,000	.....	.....	.....	.....	.....	.....	.....
	Griffith	176	5,500,000,000	.....	1,871,000,000	.....	.....	.....	.....	.....	.....	.....
	Av'ge	176	5,600,000,000	1,054,000,000	1,695,500,000	2,850,500,000	423,800,000	1,425,400,000	1,849,200,000	44,600,000	41 Yrs.	2,696,800,000
Lehigh	Smith	45	1,600,000,000	.....	476,000,000	.....	.....	.....	.....	.....	.....	.....
	Griffith	45	2,100,000,000	.....	569,000,000	.....	.....	.....	.....	.....	.....	.....
	Av'ge	45	1,850,000,000	312,000,000	523,500,000	523,500,000	130,800,000	502,400,000	633,200,000	10,000,000	63 "	904,800,000
Schuylkill and Mahanoy	Smith	263	12,200,000,000	.....	942,000,000	.....	.....	.....	.....	.....	.....	.....
	Griffith	263	11,600,000,000	.....	1,155,000,000	.....	.....	.....	.....	.....	.....	.....
	Av'ge	263	11,900,000,000	634,000,000	1,048,500,000	10,217,500,000	262,400,000	5,108,200,000	5,375,600,000	20,800,000	260 "	5,890,400,000
Total	Smith	484	19,500,000,000	.....	2,938,000,000	.....	.....	.....	.....	.....	.....	.....
	Griffith	484	19,200,000,000	.....	3,595,000,000	.....	.....	.....	.....	.....	.....	.....
	Av'ge	484	19,350,000,000	2,000,000,000	3,267,500,000	14,082,500,000	817,000,000	7,036,000,000	7,858,000,000	75,400,000	104 "	9,492,600,000

PERCENTAGES OF PRODUCTION AND RESERVE.

Region.	Percentage of Area.	Per Cent. of Original Content.	Percentage of Total Production to 1912.	Per Cent. of Annual Production.	Per Cent. of Available Reserve.	Per Cent. of Total Reserve.
Wyoming	36.3	28.4	52.2	59.0	23.5	25.0
Lehigh	9.3	9.6	15.6	13.2	8.0	8.5
Schuylkill	54.4	62.0	32.2	27.8	68.5	66.5


Wyoming
36.3%
Lehigh
9.4%
Wyoming
23.4%
Schuylkill
62.0%
Lehigh
9.0%
Percentage of Original Content
Wyoming
52.2%
Schuylkill
27.8%
Wyoming
59.0%
Wyoming
23.5%
Lehigh
8.2%
Probable Waste
50%
Percentage of Available Reserve
Percentage of Reserve
Percentage of Conservation

Q. Is there more coal per horizontal acre in a pitching than in a flat vein? A. Yes, sir, with the same thickness of coal.

Q. You might explain why that is. A. A horizontal acre of flat vein carries only an acre of coal, but a horizontal acre with a pitching vein may carry two acres of coal or three acres, depending on what the pitch is. If the vein is vertical, it would carry just as many times 209 feet as the vein is deep. I can explain this by a little diagram a good deal better. (Drawing and explaining diagram.) Suppose this upper design represented the width of a square acre: a horizontal vein underneath it would carry the same area of coal, but with a pitching vein the horizontal acre would carry more coal, because the bed area, or the area parallel to the pitch of the vein would be greater on account of the dip. For instance, a horizontal acre of a pitching vein, of a 45-degree pitch, would carry about one and a half times as much coal for the same thickness of vein, as if it was a flat vein.

Q. Is it the consensus of opinion, among scientific men who have studied this subject, that the Schuylkill region contains over half the total anthracite coal supply?

Objected to by Mr. Reynolds as manifestly calling for hearsay testimony. Question withdrawn.

Q. Is there any agreement, or consensus of opinion, among scientific men who have studied the question, as to the relative amounts of coal, of the total supply of coal, between the Schuylkill region and the other regions?

Objected to by Mr. Reynolds as calling for an answer manifestly hearsay, and as a question which the witness could not possibly answer.

Q. Do you know whether there is any such consensus or not? A. Really, I cannot answer the question as to others.

Q. Have you studied all the estimates? A. Yes. There have been two detailed estimates made, and they both agree on the point that it does, but as to the other people I do not know. They mostly draw from these two estimates, you know.

Q. As far as your study and knowledge of the coal situation goes, have there been any other detailed scientific estimates, based upon this Pennsylvania Geological Survey? A. Not that I know of. Mr. Harris made one when he was president of the Lehigh Coal & Navigation Company, but it was not a detailed one. It was just a general estimate.

Q. Do you know whether the veins of the Schuylkill region go deeper than in the other regions? A. They do, yes, sir.

Q. Does the conglomerate floor contain coal in the Schuylkill region? A. In some parts of it it does, yes, sir. In other parts they have not been able to find good, workable beds.

Q. Have the Wyoming region and the Lehigh region been mined, to your knowledge, more rapidly than the Schuylkill region? A. Yes, sir.

Q. And the percentages of total production furnished by each, up to 1912, are in the tables that you have already furnished? A. Yes, sir.

Q. Assuming the continuance of the present rate of mining, which fields would be exhausted first? A. The Northern field.

Q. You estimated 650 tons per foot-acre, did you, in your estimate? A. That is the factor that I used.

Q. Will you kindly tell us how you reached that? A. I took each field separately, determined the factor for each field separately, by estimating the cubical contents of all the mines in each field that had been mined up to the date of the Geological Survey maps, on which those mines were all shown. Knowing the thickness of veins, and the mined-over area, I could get the cubical contents of the excavation—of the hole in the ground, for instance. Then I took the published statistics, showing the total shipments that had been made from each region. Knowing the total shipments and the cubical contents of all of the mines, I could tell how many tons had been mined from each unit of volume, and in that way I arrived at this figure in the Northern coal field.

In reply to that question, I do not know but what I would like to read into the record from this book these three sheets:—

(The witness read the following extracts from his article in the Bond Record for March, 1896.)

"Wyoming Region.

Through the author's connection with the Pennsylvania Geological Survey, and careful study of the maps, as well as from his experience as mining engineer for a number of years, he has become fairly well informed as to the location of the outcrops of the various beds throughout the region and has been able to sketch them upon the maps with considerable accuracy, and measure off the number of acres of the various beds possessed by each property, and also the acreage of the mine workings. The results thus obtained are given in columns two and four respectively. Column No. 3 contains the approximate average thickness of the various beds, *inclusive of all the refuse material of the seams.* Multiply the items of column three by those of column four and we get the equivalent 'foot-acres' of No. 5, *i. e.*, 100 acres four feet thick is equivalent to 400 acres one foot thick, etc. The footing of column five gives us the total foot-acres mined (from the lands held by each interest on January 1, 1896), up to the date of the publication of the Geological Survey maps, and the grand total shows the foot-acres mined from the whole Northern field to that date. But anthracite statistics show us that the *total shipments out of this region up to that date* were a little more than 243,000,000 tons, which was the yield from the grand total of foot-acres mined. Therefore, according to the experience of the region to the above date (1887-8), the average yield per foot-acre (of total bed thickness, including refuse), was about 571 tons, and as the measured worked areas included all the thin spots, faulted and disturbed portions of the mines, this factor may be regarded as a foot-acre yield, which will make due allowance for all the various

faults, squeezes, boundary pillars and other troubles subsequently referred to.

Improvements in mining machinery and methods of preparation, as well as improvements in methods of utilizing the small sizes of anthracite, have progressed rapidly of late years, and an increasing market demand exists, so that much saving of small coal is now effected which formerly went to the waste pile; therefore, in our opinion, the above factor will be too low for the experience of recent years. We have concluded, therefore, that 600 tons per foot-acre would be more nearly correct for the years intervening since 1887, and for the future a still higher factor of 650 tons will, in our judgment, be conservative for the prospective yield from virgin lands.

Lehigh Region.

In preparing the following tabulated estimate for the Lehigh region we have followed precisely the same plan which we used for the Wyoming region, except that we have included the three feet beds as the minimum thickness minable on the prevailing dips instead of four feet, and as our method of estimating was explained at some length in our last article we need not repeat the explanation here. The basis there outlined was adopted because it made allowance for all sorts of troubles, faults and other causes of waste in ordinary underground mining.

In the Wyoming region the basin is comparatively shallow for the width, and the seams are therefore very flat, so that the length along the undulations of a coal bed from outcrop to outcrop across the basin does not usually much exceed the horizontal distance between the same points over the surface of the ground.

In the Lehigh and Schuylkill regions, however, the case is very different. The very irregular structure of the coal beds as they undulate in the very narrow and deep coal basins, causes the area of a given coal bed to greatly exceed the surface area of the land that overlies it. As a result of this, at first glance it would seem that

our method of estimating would of necessity have to be changed to suit the new conditions. This, however, is not so, and our method holds good under all conditions, for we are not trying to find the contents of the coal beds in the ground, but of the quantity of *coal that may be mined out and shipped* to market, and we are supposing that just as much coal may be mined in the future from a horizontal foot-acre* of a given bed as in the past, under the same conditions as to thickness or inclination of the measures, whether steeply pitching or flat. But we are reasonably sure that in these respects the coal beds to be mined in the future in the Lehigh and Schuylkill regions will average about the same as those that have been worked for the past fifty or sixty years. We may, therefore, safely continue our estimate as at first planned, basing it upon the experience of these past years as to horizontal foot-acre yield (of course, other things being equal, this yield would vary with the inclination of the bed, *i. e.*, the steeper pitch, the greater yield), and making due allowance for the increased yield due to recent or prospective improvements in methods of mining and preparing the coal, etc.

The total tonnage shipped from the Lehigh region up to the date of the Geological Survey maps (1884-'88) was about 106,256,161 tons, according to the published statistics; and the total horizontal foot-acres mined to the same date was 220,066, as we find from the footings of column 5 of our table. It would appear, therefore, that about 483 tons per horizontal foot-acre was the average yield of the region up to that date.

We would note from the above that the past yield per foot-acre in thick seams of pitching coal is appreciably less than the more favorable yield obtained in mining thinner veins where the measures are nearly level. This will readily appear by comparing the above yield of 483 tons per foot-acre in the Lehigh region with

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*A foot-acre is an acre of coal one foot thick, *i. e.*, 5 acres of a bed 5 feet thick would be 25 foot-acres.

the 571 tons realized in the Wyoming region, as shown in our last article.

Previous to 1888 the experience of the Lehigh region proves that about 20% of the contents of the veins were shipped to market, and the remainder either left in the ground or wasted in preparation. In our estimate we have allowed 600 tons per foot-acre as the probable yield from 1888 to January 1, 1896. For the reason as stated in previous articles the improvements in the preparation of coal have been marked, and a greater yield is now obtained than formerly, in addition some of the coal beds have been more or less re-worked during the period, in consideration of which we have concluded to allow the liberal tonnage of 650 tons per foot-acre for the future. We regard this as a full allowance for future yield in the Hazleton district (except where stripping is feasible), but much coal is now being won by re-mining or robbing the thick beds, when not too deep, and we think it not at all improbable that this yield will be obtained, particularly as the district is being rapidly exhausted, and efforts will be made to re-work old mines at every available point where profitable tonnage can be obtained and the transportation companies will doubtless operate some of these mines at a loss, if necessary, for the sake of securing the tonnage.

Schuylkill Region.

In preparing the estimate of future tonnage for the Mahanoy-Shamokin region, we have proceeded in precisely the same manner as previously explained in the case of the Wyoming and Lehigh regions, using, as in the latter, three feet as the minimum mineable thickness. We find that the foot-acres worked in Schuylkill region prior to the date of the geological maps were:

Mahanoy-Shamokin field	185,780
Pottsville region	142,590
Total	328,370

And up to the same date, the statistics of shipments from the Schuylkill region show an aggregate tonnage of 208,843,332 tons, or 636 tons per horizontal foot-acre of coal beds worked. This yield is much larger than was found to be the experience in the Wyoming and Lehigh regions, which is probably accounted for, partially, by the fact that nearly all the workings are on very steeply pitching seams from which a larger yield per horizontal foot-acre must be expected than from flatter-lying beds of the same thickness.

In the Lehigh region the beds are also steeply inclined, but the basins are not so deep, and there is a larger proportion of less steeply inclined coal. The beds of the Lehigh region that have been worked in the past will probably average much thicker than the average worked in the Schuylkill region, and on this account could not for reasons previously explained, produce as large a foot-acre yield.

While from the above facts we should expect a larger yield per foot-acre in the Schuylkill region, there are other conditions which lead to the conclusion that the yield found by us above is perhaps larger than the actual facts would warrant.

During the earlier years of the anthracite industry, the mining was very active in this field, and particularly in the Southern or Pottsville district, the major part of the mining was conducted on the cheap plan by small operators, and many mines were opened in all parts of the region. The statistics of shipments in this field of course include the tonnage thus produced, but no complete or proper surveys were made, nor records kept of many of the mine workings, mine surveys were not required by law, and many of the operators looked upon them as an unnecessary and useless expense. The geological survey sheets show the location and extent of the old mine workings as fully as the imperfect maps and other information attainable would admit. And it is from these maps that our data as to foot-acreage worked is obtained. It is probable, however, that there are mine

workings of considerable extent, long abandoned and closed, of which absolutely no records or maps are in existence, and no reliable information obtainable by the survey, while in many other cases the old maps do not show the full extent of the area worked.

It is reasonable to suppose, therefore, that there is a considerable area of old workings which we could not measure which would have appreciably increased the total of foot-acres mined, and consequently reduced the foot-acre yield.

In consequence of this we have not very much increased the yield used for estimating the future tonnage in our tabulated estimate of the Western Middle field, presented herewith, having adopted 640 tons as the factor for obtaining column 6 and 650 tons for column 10.

In using this yield of 650 tons per horizontal foot-acre for the future in this basin, we have given considerable weight to the fact that the past tonnage has all been obtained from the shallow parts of the basin and along the outcrops, where it could be most cheaply mined, and the maximum yield obtained, leaving the great portion of the tonnage of the future to be won from the deeper parts of the basins, requiring larger consumption of coal at the collieries for steam power to hoist the coal and pump increasing quantities of water from mines, which will be continually growing deeper with time. In addition to this the question of troubles, squeezes, etc., to which previous reference has been made, and many other items of expense which not only increase the cost but decrease the yield, are to be considered in the mining of the deeper parts of the basin. In view of which we consider the above yield per acre ample for the future of this basin, notwithstanding the improvements in machinery and methods of preparation, the saving of the smaller sizes, and the prospective stripping in certain portions of the region."

By that method I avoided any question of specific gravities, or anything of that kind. For example, if you

dig a cellar hole here, you know the size of the hole and you know the weight of the dirt that comes out of it, and you can tell how many tons of dirt come from each cubic yard. By that method I estimated the average experience for the past years for the Northern coal field, up to the time of the publication of the Geological Survey. Then from the mine inspectors' reports I found how much had been exhausted since that time, up to the date of my estimate. Combining the two, and making the necessary allowances for mined-out space between the date of the survey and the time of the estimate, in proportion to the amount of mining for those different intervals, we were able to tell the number of tons of coal that were actually secured during that time from each foot-acre, each horizontal foot-acre. That same process was used in connection with the Lehigh region and another estimate was made with reference to the Schuylkill region. The results in each case were something less than 650 tons to the foot-acre; but, in view of the improvements that were then being made and would inevitably continue in the future, they were increased 50 or 60 tons a foot-acre, to bring them up so as to, in a measure, compensate for the increased, improved production.

Q. Do you know whether the Reading Coal Company's own engineers recently testified to as much as 800 tons recovery? A. Yes, sir, they did.

Q. Where was that? A. At Sunbury, in February; the Pennsylvania engineers also.

By Mr. Reynolds:

Q. How many tons was that? A. About 800 tons, ultimate recovery.

Q. Sent to market? A. Yes. I understand, Mr. Reynolds, they testified to a certain number of tons on first mining, and ultimately they got up to 800.

By Mr. Coudert:

Q. How much refuse do coal veins normally have? A. The interstratified refuse averages from 20 to 23 per cent., along there.

Q. What would you say of a vein such as Mr. Rich-

ards described in his testimony, containing 80 per cent. of refuse? A. That would not be a coal vein; that would be a refuse vein. It would not be minable at all, unless it was so thick that there would be bands of coal in it that were thick enough to mine by themselves. If the vein was 80 feet thick and contained 80 per cent. of refuse, and you would have a vein of coal in there in one band 10 feet thick, that would be a minable vein but an ordinary vein five feet thick, containing 80 per cent. of refuse, would not be a coal vein.

By Mr. Reynolds:

Q. It all depends on the particular condition? A. It depends on the thickness of the coal itself.

Q. And is all referable to the particular vein he was talking about? A. Yes.

By Mr. Coudert:

Q. How would you have treated such a vein as Mr. Richards described; as a ten-foot vein or an eighty-foot vein? A. A ten-foot vein.

Q. Is it easier or harder to mine a three-foot pitching vein than a three-foot flat vein? A. It is easier to mine the pitching vein.

Q. Why is that? A. In a pitching vein there is room for a man to stand upright, if it pitches steeply enough. With a three-foot horizontal vein a man cannot stand up. You cannot get mules and cars into it. You have got to blast down the rock from the top, or dig the rock up from the bottom, to make it high enough to get your mules and cars and transportation facilities in there, to get the coal out; but in a pitching vein, a forty-five-degree pitch, a man can stand upright and mine his coal without any difficulty, does not have to dig down the roof or the bottom.

Q. Did the tax assessors in the Wyoming region count everything down to two-feet veins? A. Yes, sir; in the Northern field, the Wyoming region, they counted down to two feet in the upper end, and I think about two and one-half feet in the Luzerne County end of it.

Q. And Mr. Smith made those same additions in his esti-

mate, and also counted the two-feet veins? A. He made a difference between the flat veins of the Northern field and the pitching veins of the Southern region, in the same way, yes.

Cross examination.

By Mr. Reynolds:

Q. As a matter of fact, the Delaware and Hudson, to your knowledge, are now mining a large number of twenty-seven inch veins, are they not, in the Lackawanna end of the Wyoming field? A. I presume they are mining some. I do not know how many.

Q. You know they are mining some? A. I know the Delaware, Lackawanna and Western are mining in one place twenty inches.

Q. Less than two feet? A. Yes, but in that case it is mined, as those thin veins usually are, in connection with thicker veins in the same mine, you know. In the case of the thin vein that the Lackawanna are mining, for instance, they take down a good deal of rock and then they transport it to another part of the mine and pile it up in the chambers, and then they mine the pillars out in the same vein, so that they mine it in combination. The mining of the twenty-inch vein enables them to get a large amount of material for filling up the thick vein, and they get the pillars out, save them, you see.

Q. And they mine four inches less than a two foot vein? A. In that case they do, yes.

Q. Where else in the Wyoming region, that you know of, are they mining two-feet veins? A. I do not know of any other place.

Q. Do you not know that the Elk Hill people are mining a twenty-seven-inch vein? A. No. They may be; but I do not know about it.

Q. What properties in the Wyoming region are you intimately familiar with? A. At present I am not familiar with any, except right at Scranton. I have been through the Scranton mines recently, in connection with making a report of the condition of caving under that city, for the

city authorities, but recently I have not been in many other anthracite mines, except one or two down in the Schuylkill region.

Q. Have you been in the Jermyn properties lately? A. Not lately, no.

Q. How lately? A. I made a report for the Jermyns, I guess fifteen years ago.

Q. How thin were they mining in the Jermyn then? A. At that time I do not think they were mining anything under three and a half feet along there; but they had some other veins there that were thinner, that were not estimated on.

Q. Do you not know, from litigation up there in Scranton, that they are mining very much thinner veins there now? A. In some places they are, yes, but I do not keep much track of the litigation there.

Q. Going back to your report on coal mine support in the city of Scranton, that sort of thing has a very serious effect on the amount of coal minable out of a property, does it not, the obligation to support the surface? A. It does, yes.

Q. And that factor was not considered in your process of arriving at a flat 650 tons to market out of every foot-acre, was it? A. Oh, yes, they had mined the veins under the city before, the 50 years preceding, just the same as they have for twenty years since, and it represented the absolute experience of the whole region for fifty years past, whether or not it was under the city, and whether or not they mined the pillars. It was an average figure, was not a constant figure—would not apply to any particular mine. Some mines would not get that much. Some would get a good deal more. If, for instance, you would have a number of poor mines and they did not get that much, say, that would not affect the average value, because there were a great many other good mines which did get it, and got a great deal more. It included, of course, all the troubles and faults, thin coal, thick coal, squeezed coal—coal of all kinds that came out of the ground was included and covered and allowed for by that estimate, because out

of all that conglomerate mass of coal there were just so many tons of coal sent to market, and those were the ones I used in dividing up.

Q. There has been a great deal of coal mined from those properties in Scranton, has there not? They are pretty well mined out, you said? A. No; they could mine a whole lot more coal there.

Q. If they were permitted to take out the pillars, for instance? A. And there is a whole lot of unmined coal under the city of Scranton, a whole lot of it; but it has been rather extensively mined there, all the same.

Q. From Carbondale to Pittston is what we call locally the mined out portion of the Wyoming region, is it not? A. Yes. The great bulk of the coal left there is in the lower end of the region, the Luzerne County end.

Q. And, relatively speaking, the mining operations under the cities of Scranton and Wilkes-Barre are in the most advanced stage of any group of operations you could pick out in the Wyoming field, are they not? A. Where are those located that you speak of?

Q. In and around Scranton and in and around Wilkes-Barre? A. Well, no, I think Carbondale is about as advanced as any.

Q. Then Carbondale, Scranton and Wilkes-Barre? A. Yes—that includes the whole field. The least mined region is the deep measure between Wilkes-Barre and Nanticoke.

Q. I was coming to that. Those are stated in about the right order, are they not, Carbondale, Scranton and Wilkes-Barre? A. Yes.

Q. Carbondale is the most mined out, Scranton next, and immediately under Wilkes-Barre next, and then in the field between Wilkes-Barre and Nanticoke there is quite a little virgin coal, is there not? A. Yes, sir.

Q. As I understood you, your preliminary study of this general situation led you to first figure from a statistical history of the shipments from each region, and by that to derive a factor of minable coal to market out of each acre in each region; that is correct, is it not? A. Shipable coal

to market, yes. I make a distinction between minable coal and shipable coal.

Q. I know you do. Minable coal to market, I said; that is the same thing? A. Yes.

Q. As a matter of fact, your historical, statistical study brought you out with 483 tons per foot-acre in the Schuylkill region and about 100 more tons per foot-acre in the Wyoming region, did it not? A. No. 483 tons per foot-acre in the Lehigh region and 571 in the Wyoming region.

Q. Your 483 tons per foot-acre, you found not only in the Lehigh region but in the Schuylkill region, did you not? A. In the Schuylkill region, 636 tons to the foot-acre.

Q. Let us see if we have it straight. 636 tons per foot-acre in the Schuylkill region? A. That was the experience for the fifty-odd years beforehand, fifty or sixty years beforehand, yes.

Q. And 483 tons for the Lehigh? A. Yes, and 571 for the Wyoming.

Q. In spite of what you found historically, you just eliminated all experience in respect to those equations, and made them all 650, as I understand your table? A. Yes; but I did it separately, and for different reasons in each case.

Q. The fact was, however, that by a curious coincidence you came out 650 tons from all three regions? A. Yes, sir.

Q. How long did you operate the Pancoast Coal Company? A. I never operated it. I was engineer for a while.

Q. How long? A. Several years; I do not remember now.

Q. About how long ago was that? A. Fifteen or twenty years ago. I sold my instruments and quit this local engineering fifteen or twenty years ago, and have not been doing any actual surveying since that. If I wanted any of that done, I would hire some of the engineers around there to do it for me.

Q. You have not been in practical charge of any of the anthracite operations? A. Oh, no, I never was. I was president of a company once, but I was not in charge. I was kind of a figurehead in that respect.

Q. Your severance of your practical connection with those matters was just about coincident with your writing this article in 1896, was it, as a matter of time? A. No. My practical severance was later than 1895 a good deal. You see, I was president of a coal company down to eight or nine years ago, I guess. I do not know the exact time.

Q. Did the work you have been doing in the Pottsville field and the Mahanoy basin involve a practical contact with the coal workings at the present time? A. It was an investigation of them. You mean the tax assessment business up there?

Q. No, I mean anything you have done. A. That is all I have done in connection with that, you know, lately.

Q. Have you had much contact with the Southern field in the last twenty years? A. Quite considerable, but not inside the mines.

Q. Not in the inner workings of any of those mines? A. No, except where I have made an occasional report, gone in and examined a mine to make a report on it, that is all.

Q. In what period was it that you were located at Pottsville, as an assistant engineer? A. About 1883, I think, along there.

Q. And that was for a few months, was it not, and then you were moved up to ——. A. Hazleton; yes, it was for several months, five or six months, somewhere along there.

Q. When you made that geological survey, back in the time you were on the Survey, how full and satisfactory were the data and mine maps which you received from the independent operators? A. It was just as full as they had it themselves.

Q. How full was that? A. They permitted us to go into their offices and copy all the maps that they had. The mine maps were all copied, traced from the originals, and

they gave us records of bore holes, we got permission to go into the mines, and we measured the shafts and measured the things that we thought were necessary to have, that they did not have, and in that way we compiled all the information we could get, of every sort, in connection with the geology of the coal.

Q. Did you find that the independents had the systematic methods of preparing mine maps and data, upon which you could compute coal contents, etc., that the larger coal companies had? A. Yes; some of them did at that time. During the very early ages of the coal mining, as it is explained in these reports, some of the data were not so complete, and these are all considered; all those things are considered, if you will read these items in connection with that 650 tons. They are all considered and mentioned here. For instance, years ago, when we were at the start of coal mining, they did not think it was worth while to survey coal mines at all, and then, when they began to survey them, they did it in a very incomplete, careless way. As the business grew and time went on, the importance of making better maps was impressed upon the mine owners, for their own convenience and use, and then later it was required by the State laws. So that some of the old, old mine maps are incomplete and there may be mines there that were never mapped at all. So those things are considered in making this 650 tons, and are specified here; and it is also probable that the statistics are incomplete. There are more tons shipped to market than the statistics show, for instance. In the early ages they perhaps did not keep so complete statistics as they did later.

Q. What data did you have, from what independent operators, as the basis for your computation? A. I do not understand.

(Question read.)

A. You mean for this computation?

Q. Yes. A. I took all my data from the Geological Survey maps. I did not go to any independent operators for this thing. I went to the Geological Survey maps and the mine inspectors' reports.

Q. Then how do you know just what completeness there was to the information as to the independent operators? A. I had everything that the independent operators had.

Q. But you do not know what they had? A. Everything that they gave to the Geological Survey.

Q. But you do not know what that was? A. It is shown on the maps. Everywhere the Geological Survey had all the maps that were in existence except in one or two cases, and there they were not given for a particular reason, and that was specified, you know. But it was a very simple matter to estimate the tonnage from any individual operator from the mine inspectors' reports, because the shipments of the individuals, after the time of the Geological Survey, were all in the mine inspectors' reports.

Q. I understand the shipments were, but I am only asking about the mine maps. A. All of the mine maps, just as complete as the independents, or the railroad companies, or anybody that mined coal in the anthracite field possessed them, were placed on the Geological Survey maps, except as I stated, and, in those few exceptions, it was written right across the face of the map that they were exceptions.

Q. Is it not a matter of fact that the independents did not have the systematic methods of making mine maps, &c., that were in vogue with the railway coal company properties? A. There may have been some of that kind. The up-to-date independents were up-to-date. Those who were a little careless, were not. As a rule, the coal companies have been the most advanced in all of these matters—that is, the big corporations. They have the most up-to-date methods all the way through, in connection with the coal mining.

Q. It is a fact that these coal companies connected with the railroads have generally adopted more scientific and systematic methods of accounting and have reduced the waste, is it not? A. Yes, sir, there is no question about that.

Q. Was it your observation also that the short tenure led to small operating units, careless methods and extravagant waste of the natural resources, while long tenure promoted large operating units and scientific methods, resulting in the greatest possible conservation? A. Yes, sir, that

is unquestionably true. I think that is an economic law, universal.

By Mr. Coudert:

Q. You are speaking now in a general, theoretical way? A. Yes, sir, and a practical way, as far as the anthracite coal regions are concerned.

By Mr. Reynolds:

Q. You are speaking of the anthracite coal regions and your observations? A. Yes; there is no doubt about that at all.

Q. How much special preparation did you give to testifying to-day? A. About three days.

Q. I understand that in your exhibit, which was filed in the old case, you did not assume that any coal would be mined in the Wyoming region, except in those beds of at least four feet in thickness. This is your own exhibit (indicating). Just look in the first left hand column and refresh your recollection. A. That is something that has been introduced in this case?

Q. No, you put that in four or five years ago in the old case, did you not? A. I do not know that I put it in. I suppose somebody else put it in for me, without my knowledge.

Q. You were on the stand when it was put in? A. Yes, I was on the stand once before.

Q. And you were examined in respect to it. I direct your attention to the column on the left of the page, for the Wyoming region. My question is, did you include in the shipable coal in the Wyoming region any coal less than four feet in thickness? A. I did not intend to. I limited my estimate of the Wyoming region down as low as four feet veins, and did not expect to take anything lower than that.

Q. There has been a great deal of pillar robbing in the Wyoming region, has there not? A. There has lately, yes, and some in the earlier days.

Q. The Wyoming Valley is shaped like a large flat boat, is it not, roughly? A. Yes, shallow canoe.

Q. And the coal measures lie, generally speaking, hori-

zontally? A. Yes, except at the margins of the basin, and there they are not very steep dips, only slight.

Q. The only place they are not horizontal is practically on the outcrops? A. On the outcrops, yes, sir.

Q. About how much of a staff have you used in preparing yourself for testifying to-day, during the last three days, or these three days? A. Myself, alone.

Q. Your testimony, then, practically goes back for its value to your Bond Record article and your communication to the Congress of Chemistry, does it not? A. Largely, and something besides that. I have this testimony here. I have investigated this. (Referring to record in present case.)

Q. That is, you read over Mr. Huber's and Mr. Richards' testimony? A. Yes.

Q. You followed Mr. Smith, of whom you spoke, in your estimate, did you not—in the matter of time, I mean? A. I was several years afterward, yes.

Q. You were about three years later in making your estimate, were you not? A. Yes.

Q. And, like Mr. Smith, you differentiated between the Northern and Southern field, in your basic proposition that thinner veins could be mined in the Southern than in the Northern field? A. Yes, sir.

Q. Do you know of any vein of coal in any operation in any part of the entire Southern field that is mined down to twenty inches? A. No.

Q. I note that you introduced, as part of your testimony, a table from your communication to the Congress of Applied Chemistry, giving percentages of production and reserve for the various regions. From the photograph I note that that is taken from the top of page 93 of Volume XXIV of the original communications of the Eighth International Congress of Applied Chemistry. That is correct, is it not? A. Yes, sir.

Q. You gave that paper at the meeting of September, 1912, as of the end of the calendar year 1911, did you not? A. Yes, sir.

Q. Just below the table which is put in, you made this

statement, did you not: "It is impossible to predict, with any approach to accuracy, the duration of the life of the supply of anthracite coal in the United States, because there are so many unknown quantities entering into the proposition. It would only be remotely approximate to divide the annual rate of exhaustion into the available supply, as we have above tabulated it?" A. Yes.

Q. You spoke, in general, of the conservative character of your estimate. You endeavored, did you not, at the time you made your estimate for the Bond Record, to make that same conservative estimate of the contents of the Dauphin basin? A. Yes.

Q. And of the contents of the Lykens Valley veins? A. Yes, sir.

Q. And of the Buck Mountain vein? A. Yes, sir.

Q. And of the various Red Ash veins? A. Yes, sir, in a general way.

Q. You held yourself to the same conservative tendency on those estimates that you did over the remaining 485 square miles of the coal region, did you not? A. Yes, sir.

Q. Between 1896, when you made your prognosis for the Bond Record, and 1912, when you made your second prophecy to the Chemical Society, there had been roughly 18 years of observation of conditions, had there not? A. Yes.

Q. In your table 157 you gave the mines of the Central Railroad of New Jersey a life of 163 years? A. Yes.

Q. And under tonnage owned, you gave them 4709 acres in the Southern, or Pottsville field? A. Yes, surface acres.

Q. Where is that property? A. The Alliance Company lands; that is one company that is subsidiary to the Central Railroad of New Jersey, and it seems to me they owned the Kaska William tract, and several others that were down there at that time.

Q. In the Lehigh region you give them an acreage of 9335 acres? A. Yes.

Q. What lands were those? A. Those were the Lehigh and Wilkes-Barre lands up there. You see, at that time

the Lehigh and Wilkes-Barre and the Lehigh Coal and Navigation Company were subsidiaries to the Central Railroad of New Jersey.

Q. In 1896? A. 1896, yes.

Q. The Lehigh Coal and Navigation Company lands are in there also? A. Yes, sir, the Lehigh Coal and Navigation Company; all who shipped over the Central Railroad of New Jersey at that time are in here.

Q. That is, the Lehigh Coal and Navigation Company —— A. The Lehigh and Wilkes-Barre, Lehigh Coal and Navigation Company, and all of the subsidiary companies, and all that they owned or controlled in any way, and also all of the individual operators who shipped their coal over those roads.

Q. I understand, but you will find that your individual operators you have separated in the line below. A. Yes; by contract, yes.

Q. But I am right, am I not, that in the 9335 acres which you put in the Lehigh region and the 4709 acres of the Schuylkill region, as tonnage owned by the Central Railroad Company of New Jersey, you include all the tonnage of the Lehigh Coal and Navigation Company, the Alliance Coal Company and the Lehigh and Wilkes-Barre Coal Company? A. Yes.

Q. The Honeybrook lands of the Lehigh and Wilkes-Barre Coal Company are a very insignificant part of the Lehigh and Wilkes-Barre Company's holdings, are they not? A. Yes.

Q. So that most of the Central Railroad of New Jersey tributary coal tonnage, under your way of figuring it, is in the Wyoming region, is it not? A. Yes. The Lehigh Coal and Navigation Company lands come in, and that is a very important factor in this, you know.

Q. In the Lehigh region? A. Yes, sir.

Q. Just how did you figure out, in 1896, that the Central Railroad Company of New Jersey, with lands in the Wyoming and the Lehigh region, would have a life of one hundred and sixty-three years? A. I divided the tonnage of coal that went annually over the railroad at that time into the total tonnage that they had here.

Q. Then in 1912, in the table which the Government now put in, from page 92 of the communications to the Eighth International Congress of Applied Chemistry, you give the duration of available supply of anthracite coal at the present rate of exhaustion, for the Wyoming region as forty-one years and the Lehigh region sixty-three years? A. That is the way that comes out, too. I did not know there was that coincidence until you just now mentioned it.

Q. That is, the Jersey Central lands are going to last one hundred years longer than the duration of the available supply of anthracite coal in the Lehigh region? A. One hundred years longer?

Q. Yes. A. You must understand that the shipments are different now. The rate of shipment from the Lehigh region is a great deal more than the shipment on the Jersey Central Railroad was in 1912, you see. The smaller quantity of coal divided by a much smaller factor, might come out a great deal more than the larger supply of coal divided by a larger factor.

Q. And all that tremendous difference, in that first case, has been brought about by the experience of eighteen years? A. No. The first estimate is the Central Railroad of New Jersey only shipments. Now in this other table it has reference to the whole Lehigh region, and there are other shipments going out of that besides the Central Railroad Company of New Jersey's now. You have not only the Central Railroad of New Jersey but the Lehigh Valley and the other railroads that are in the Lehigh region. They are all shipping coal and they produce a very much larger tonnage that goes to market. So if we divide a tonnage that amounts to, say two into a hundred tons, that would leave fifty years. But if we divide a tonnage that was only one, or a quarter for instance, into fifty, we would have a good deal longer time, you see. So that that comes out very naturally by division. We do not use the same numbers to divide by.

Q. Has the Lehigh Coal and Navigation Company sold any of its lands, to your knowledge, in the interim? A. No, not that I know of.

Q. Did the Lehigh and Wilkes-Barre Coal Company? A. Not that I know of. Then too, Mr. Reynolds, the lands referred to belonging to the Central Railroad Company of New Jersey here, contained a lot of coal which is not included in that Lehigh Valley—that includes the coal in the Lehigh region, but the Alliance lands and other lands subsidiary to the Lehigh Coal and Navigation Company are in the Southern field, you see, so that they come out of that, and all these different changes make the figures come in that way.

Q. You were speaking of the Pennsylvania Railroad shipping from the Lehigh regions a few minutes ago. Where are they shipping anything from the Lehigh region? A. I do not remember speaking about the Pennsylvania shipping from there. I spoke about the Lehigh Valley.

Q. In your exhibit there you speak of the Pennsylvania Railroad shipping from the Lehigh region. Is it a fact that they have ceased so to ship? A. They have 200 acres of land there, and were shipping from some colliery. I suppose—yes, a colliery that they had a contract with at that time.

Q. The Susquehanna Coal Company has not any operations in the Lehigh region, has it? A. No, but they did have about this time. They had their West Hazleton lands, which have been sold since, you know.

Q. The point is, there is no Susquehanna Coal Company coal shipped from the Lehigh region at present, is there? A. Not so far as I know of.

Q. Nor was not at the time you wrote your article for the International Congress of Applied Chemistry? A. No, I do not think there was.

Q. So that would not have any effect on the duration of the life of the region, would it, one way or the other? A. The coal is still there, you know, and may be mined by other people.

Q. You mean 1,100,000 tons of coal is there? A. Yes. It was at that time controlled by the Pennsylvania Railroad.

Q. And in twenty years they have not mined a million tons? A. If they own it still, they have not mined any; but I think they have sold it.

Q. You did not say in 1896 that they owned it, you merely said that they had a tonnage contract. A. Yes, a tonnage contract. There was some ground down there that was tapped from the Pennsylvania Railroad somewhere; I do not know where it was.

Q. If they only had a million tons twenty years ago and were under contract to ship it by the Pennsylvania Railroad, it would not be much of a factor to-day, would it? A. No.

Q. In relation to the total? A. No.

Q. Of the total Lehigh region, 464,000,000 tons, it would be 1-464th, so that can be ignored, can it not, in reconciling your two periods of variation? A. Well, I do not know. You see, I do not follow these figures quite rapidly, and it may be it would affect it the other way. I do not know. I would have to go over these figures.

Q. It would not affect it much either way? 1-464th projected into two hundred and sixty-three years would make about six months, would it not? A. Yes, but there is a peculiarity in the Lehigh region, which is referred to in this Bond Record article; that is, that if you depend on the ordinary course of underground mining for the Lehigh region, as they did in the past, their output would be rather small; but they have a great many thick veins, and they started the method of stripping from those veins and have added thereby one hundred to one hundred and fifty million tons to their product, which is just merely referred to in this and not included in that estimate.

Q. Where do you know of any stripping operations in the Lehigh region, except at Audenried? A. At what they used to call Harley, and at Sandy Run.

Q. Do you not know that Sandy Run is abandoned? A. Yes, but they stripped there all right.

Q. Now? A. Not now, but they did. They filled it up again.

Q. I am talking about the present. You know Sandy Run has been abandoned for a long time? A. Then I think the Markles did a whole lot of stripping. I do not know myself. I have not been in the Lehigh region to

examine it carefully, except just passing by on the trains, you see, and there may be stripping there I do not know of.

Q. How long ago was that? A. I have been down there every year more or less two or three times, but I only know just from the cars. I have not been out around at all and there may be stripping there that I do not know about, and there may not be. It may be all completed and stopped; I cannot say as to that, but I have reference to this thing that was going on there. There are doubtless other lands in the Lehigh region which may be stripped. I cannot say as to that.

Q. You really do not know very much about the present condition there? A. No, I have not been there lately. The fact of the matter is that my work of recent years has been all over the world, outside of the anthracite region, you know.

Q. You have been in the western territory a great deal in the last ten years, have you not? A. No, all over the United States, Alaska, Mexico, South America, Canada in both directions, and in our Northern anthracite field more or less.

Q. Take the last ten or fifteen years; you have devoted very little attenion, really, to the detailed business in the anthracite region, except right around Scranton, in your work on the coal support question? A. That is true, yes, sir.

Q. I understood you to say, from your direct examination, that these articles of Mr. Smith and yourself really were the germ of this field of investigation, prophesying the exhaustion of the anthracite coal supply, were they not? A. I think Mr. Harris started the thing.

Q. Then Mr. Harris, before that? A. Probably, yes.

Q. And really you three men have done all there has been done on the subject, practically? A. Practically, yes, sir.

Q. Could you hope to render any authoritative service, in a work of this sort, in less than six months' time, and then if your work was not facilitated by the hearty co-operation of the engineering staffs of the various coal

companies tributary to the several railroads, and would it not be necessary for you then to have, besides all that help, twelve or fifteen competent assistants to compile the results and prepare them, in readiness for you to testify, and even on six months' time, would not every day of that time be important in getting up such testimony? A. Yes, sir, if you were to throw away the work of the Pennsylvania Geological Survey. If you based it on the records of the mining companies as they are now, doing it all over again, throwing away the work of the Geological Survey, it would take a tremendous amount of time and lots of men, etc., as you have said; but with the Geological Survey, as this was done, you could make it in a short time. I do not think it would be quite so complete as the method you speak of. This took me about four or five months, as it is.

Q. In 1895? A. In 1895, yes, and if you were going to throw this information all away and not use the work of the Geological Survey, but go to each coal company and compile the information from their maps, etc., it would make a tremendous job.

Q. You had all that work of the Geological Survey and five months of time when you made your original report in the Bond Record, in 1896? A. Yes.

Q. And you had also had eighteen years' experience when you made your report, or read your paper to the International Congress of Applied Chemistry? A. Yes.

Q. And you still said that it was impossible to predict, with any approach to accuracy, the duration or life of the supply of anthracite coal in the United States, because there are so many unknown quantities entering into the proposition? A. That had reference not only to Pennsylvania but to the United States, Alaska, Colorado and other places, you know, and it is true also with reference to the Pennsylvania fields alone, because I do not know what the future is going to bring forth. We do not know how long it will last. If we just simply divide the approximate tonnage by the shipments per year, or the production per year, we can get a figure which represents

the life of anything. It is an estimate, the best we can do now. But the future experience, the future results, may change that. They will hardly make it any less. They may make it a great deal more, because we are all the time finding new ways of utilizing coal; we are finding new and cheaper methods of mining coal and, as the coal becomes exhausted, it becomes higher in price and, therefore, they can afford to spend more money getting out coal that they could not get years before. Consequently, when you come to estimate the life of the coal supply, you have to base it on something you know about; but, as to whether it is going to be anywhere near correct or not, that depends on the future, on what they do in the art of mining and preparing and using coal.

By MR. COUDERT:

Q. That is the uncertainty, you mean? A. Yes.

By MR. REYNOLDS:

Q. In this article you wrote you did not consider the subject of the coal deposits in Rhode Island, or Alaska, or Colorado, did you? A. They are referred to in there, yes.

Q. I know, but you did not consider them in your estimate of the life of coal in Pennsylvania? A. No.

Q. Or the United States? A. I am just saying that, when I made that remark, it had reference to the whole United States; but it is true also of Pennsylvania alone, as I said, and I explained why.

(At 1 P. M. a recess was taken until 2.15 P. M.)

Re-direct examination.

By MR. COUDERT:

Q. Mr. Reynolds questioned you in regard to that figure of 650 tons of coal per foot-acre, both in the Southern and the Northern fields, and asked you whether it was coincidence that you had reached that amount for both the fields. Did you reach that amount by a similar method for both fields? A. I reached it by a similar method. It did not make exactly that amount, but I made it that amount for convenience in making the estimate. In the Southern field

the amount came out 636 tons to the foot-acre. In the other two fields it came less than that, and I increased it in every case up to 650 tons; but the increase in the Southern field was less than it was in the other two fields. You understand, it was more conservative with reference to the two Southern fields. The assumption of the difference between 36 to 50 was the increase there.

Q. So it was a more conservative estimate, as far as the Southern fields were concerned? A. Yes, as far as the two Southern fields were concerned; that is the Western Middle and Southern Middle fields.

Q. You have read the testimony of Mr. Huber in this case? A. Yes, sir.

Q. Have you read the testimony of Mr. Richards also? A. Yes, sir.

Q. You have read them carefully? A. Yes, sir.

Q. Have you anything to say in regard to their criticism of your table? A. Mr. Huber attempts to make a comparison of my estimate, that was made eighteen years ago, with the tax assessment on lands that are different lands, many of them, from those which I estimated on, and under entirely different circumstances, made eighteen years later. The engineers for the assessment estimate according to the improved condition of the art of mining and preparing and selling coal, using coal now, and, therefore, the quantities they estimate per foot-acre are very much larger than was customary and was in vogue at the time of my estimate. When they mine now beds of coal between four feet thick and two feet. They also mine now a great many more pillars than they did then, which were not included in my estimate. They also mine smaller coal, a great deal more of the really small coal, which was not mined in those days, so that any estimate made now by assessors, or anybody else, would be very much larger per unit of volume than was made by me years ago. It was attempted to be made in a conservative way. Then Mr. Huber attempted to make this comparison not knowing the lands that I had included under the different railroad companies, and, of course, he could not make a fair compari-

son, as he admitted later in his testimony. Then in one place he claims, in his testimony, that the amount of tonnage that I credited to the individual operators, as I understand it, was something over 26,000,000 tons. That is not a true statement. That is the tonnage that I credited to lands that were not operated at all, just simply individual lands, owned by individuals and not leased to or operated by any railroad. The individual operations that I estimated on were all included under the various railroad headings, and the tonnage controlled by the individual operators ran up into a great many more tons of coal than that; up to two to four hundred million tons. I do not know how much now, but a great deal more than this 26,000,000 tons, which was simply the land which was available for purchase or lease at that time, virgin lands owned by the original owners, not operated, and held for sale or for lease. Since that date most of them have been purchased by the companies, or have been leased and are under operation; very little of it left.

No estimate of anybody, based on the taxation at the present time, would be any criterion by which to judge my estimate, because a great many of those taxable lands are not taxed to the company that ships the coal. Take for instance the Lehigh Valley. There are a whole lot of lands included in my estimate under the Lehigh Valley, which are not taxed to the Lehigh Valley at all. They are owned by individuals and taxed to individuals. Some are sold to other railroad companies and are taxed to them.

Q. Will you amplify that a little, in regard to the Lehigh Valley and the criticism that is made as to your figures dealing with the Lehigh Valley coal? A. Yes. Along with the Lehigh Valley I included, as being tributary thereto, and under that heading in my estimate, some thirteen or fourteen individual or independent mining companies. The Lehigh Valley have produced since that time, according to Mr. Huber, 44,236,000 tons; but these other independent operators, who were included with them, have produced 43,978,000 tons, or just as much, pretty nearly, making the total production from the lands that

I estimated on as Lehigh Valley lands, something over 88,000,000 tons. I figured about 179,000,000 tons as being the content of those lands, and Mr. Huber testifies that the testimony of the Lehigh Valley shows only about 61,000,000 tons. That is for the portion of the land which produced only half of that 88,000,000 tons, and that leaves only 30,000,000 tons to be still produced from the other half of the land, you see. Consequently, that does not refute my estimate at all.

Take the Delaware and Hudson. My estimate was 115,000,000. Mr. Huber gives the shipments at eighty-four million odd, which leaves 31,000,000 to be in the ground, according to my figures. But you would have to add all the thin coal that the Delaware and Hudson has up above Carbondale and Scranton and around there, somewhere around 50,000,000 tons of coal that they have in thin veins, below four feet. If you add those, it would make it somewhere near 81,000,000 tons they would have left. Now if you divide the 138,000,000 tons remaining by the 1100 tons to the foot-acre that they are estimating now for the Delaware and Hudson, you would have something over eighty-one and a half million tons left, and that checks up pretty close. So with the other companies. For instance, there is the Delaware, Lackawannna and Western Company. For instance, there are twenty-one independent operations that were estimated on as part of the Delaware, Lackawanna and Western shipments at that time. Since that time four of those are shipping largely over the Pennsylvania system. One of them has been abandoned and four of them have been purchased by the Ontario and Western, one by the Erie and one by the Lehigh Valley, so that we have a great many properties there that were estimated as D., L. & W. properties that were not estimated by me and on which the D., L. & W. does not pay taxes now at all.

Q. So that, in the main, the discrepancies between your figures and Mr. Huber's are due to the fact that you and he had entirely different areas before you? A. Different areas before us and different rates per foot-acre of estimating, and things of that kind.

Q. A difference between two and four feet? A. Yes, and the difference between 650 and—up above Scranton there, I believe they estimated from ten to twelve hundred tons to the foot-acre, and down below from eight hundred to fourteen hundred. It depends on the locality and the conditions, the difficulties of mining the coal. So that in very few cases are the properties the railroads pay taxes upon the same properties that I estimated on; only a portion of them.

Q. Have you anything else to say in regard to Mr. Richards' testimony, any other matters you would like to call attention to? A. Mr. Richards made reference to the three-feet beds as being more minable in the Northern field, or less so in the Southern. He knows better than that. He knows there are some things about three-feet beds which make it appear as though it was easier to mine them, but he knows just as well as anything that there are other things about these thin beds which make it a fact that they are easier to mine than the same thickness in flat measures, and, if he were called upon to swear right up and down to that fact, he would go back on the appearances mighty quick, that he gave there. The Lykens Valley beds, in the western part of the basin, are in the lower part of the measures and have only been mined where those measures come to the surface, and have only been tested in those parts of the basin. In some places they have been found as thick as ten feet, for instance, some of them, and in other places they have been found thin. Sometimes these thick beds are unreliable and squeeze out in a little while. Sometimes the thin ones get thick in a little while, and, so far as the Dauphin basin is concerned, it is like an unknown territory. Mr. Richards does not know very much about it, nor anybody else. It has not been explored very much. There is coal there, and there ought to be considerable coal. Now, instead of estimating these beds at five or six feet thick, or ten feet thick, I put them as low as my estimate would permit, down to three feet thick, and estimated—Mr. Richards says he figured it out, I believe, on the figures I gave him, at about

150,000,000 tons. The other estimate, made by Mr. Smith for the Coal Waste Commission, was one hundred and thirty odd million tons for those same beds, after quoting the adverse conditions that exist in that locality. Then, too, nobody knows actually whether the Lykens Valley beds are good for anything in these deeper measures or not, over the rest of this Southern field. They have been found good in some places in the Western portion and the other portion is so deep we do not know. In so far as the Schuylkill region is concerned, I have only included the Lykens Valley beds as minable under forty-three per cent. of the whole region, throwing away absolutely the other part, fifty-seven per cent., of that whole region, as not having beds of minable thickness. My idea was that it would average up. You see, this is an average estimate. I did it to cover the known and the unknown for the whole acreage. Now this Dauphin basin is a stretch of land twenty-three miles long by about a mile wide at one end to nothing at the other end, and is very deep. There are possibilities, in the unknown portion of it, of their finding a great deal better coal than they estimate, or that they can find now. Then, too, there were beds working in this Dauphin basin and in that section and in the Lykens Valley veins years ago, been working for a long time, and the experience of those mines, Lincoln colliery, &c.—the tons they got out, &c., and the area mined over—was included in making up my average for the whole field, of 650 tons per foot-acre. If those veins there were bad, the mines were poor and the veins were poor, it showed in that—that is what made the thing so low. If they had been better, my 650 tons per foot-acre would have been larger, for instance.

Q. Would you be influenced, in judgment as to the correctness of your estimate, by the fact, testified to by Mr. Richards, that certain people had tried mining in those regions and had failed? A. Oh, no.

Q. That would not affect your opinion of your estimate? A. That did not affect me. That does not affect anything in this estimate. Because people who go down there to mine, and do not know how to mine, fail, that has nothing

to do with it. I suppose there have been people who went there from the Northern field who made failures, and people in the Southern field have made failures, but these failures have all been included in getting the 650 tons' factor.

Q. From your general knowledge of the coal situation, would you say that the mere fact that people had gone there and had not been commercially successful in mining, did not at all mean that there was not an amount of coal there approximately up to your figures? A. Oh, no, not at all, simply because the result of these failures, the tons of coal that came out of those failures, went to market just the same as the tons of coal from other places, and if a great big mine only produced 10 tons, that went to market and had its effect in my factor.

Q. And those failures could be explained by lack of knowledge of mining, or lack of good methods? A. Yes, and lack of good coal, possibly, in those particular mines. My estimate was an average estimate. It included the good with the bad, and, while this 650 tons would not apply to each colliery, some of the collieries that were good, where the Mammoth Vein is a great deal thicker, and the other veins average thick, would raise the estimate above that, so that while the average is 650, it might be very poor in one case and very good in another, and the selection of a whole lot of poor mines is no refutation of the accuracy of the estimate. He would have to include with it a whole lot of good mines, to average up.

Q. Is it not quite possible that there may be tremendous amounts of coal there, that could be secured by improved methods of mining, were the methods to be improved? A. Yes, no doubt about that. They are improving their methods of mining now, and they are getting more coal now; coal that they lost when I made my estimate they are mining now, through improved methods. There are a good many things which may be said about each particular mine, in each particular coal vein, both derogatory to it and, in some cases, to its advantage. If you speak of all the disadvantageous things, without saying anything about the advantageous ones, you do not get a fair estimate of the

value of the mine, of the veins. Now as to the thickness of veins that they are mining down there, all through the Schuylkill region. If they find as low as two and a half feet, or anything that they think they can get out, they mine those beds along with the thicker ones. They do not open new mines purposely for thin veins, but they do mine thin veins along with the thick ones, in almost every mine, and that, of course, is so in the Northern field. It is all over. Nowadays we have got to the place where we want to conserve all the tonnage we possibly can, and we are getting a large amount of tonnage from those thin veins which, years ago in 1895, they did not mine—they left them for the future apparently—and they are not included in my estimate. There is a matter I wanted to say something about in connection with a question Mr. Reynolds asked me about that sixty-three years' life.

Q. I was going to ask you about that. What have you to say in regard to that question, on the life of the mines of the Central Railroad and others? A. I wanted to explain that. For instance, he asked me about that coincidence of the sixty-three years. In 1895 the Pennsylvania Railroad Company, in all of the three coal fields, is credited as having 316,502,750 tons available, according to the methods and practice of mining at that date, and that their shipments over the Pennsylvania Railroad at that time were a trifle over 5,000,000 tons per year, giving a life to those shipments, on that basis, of sixty-three years. Now the Central Railroad of New Jersey is credited on the same date as having 877,569,700 tons in all the three regions, and they are credited with shipping annually 5,388,104 tons. Those shipments on that basis, if continued, would last for one hundred and sixty-three years. In the amplified article, made some time ago for the Eighth International Congress of Applied Chemistry—that is 1912—the total available coal for the future was estimated at 633,200,000 tons, in the Lehigh region, and the total tonnage produced in 1910 from the Lehigh region was about 10,000,000 tons. Consequently, on that basis, that quantity of available coal would last sixty-three years. Now those are the actual figures of

these estimates and they speak for themselves and there is no contradiction.

Because sixty-three years is the result in the Lehigh region and another sixty-three years is the result in the Pennsylvania Railroad, for the former estimate, is a mere coincidence, and the fact that the Central Railroad of New Jersey is credited with one hundred and sixty-three years' life does not contradict the accuracy of the 1912 estimate, nor vice versa, because the figures are different.

Q. Can you give any testimony as to the increase of potential production and shipment from the Schuylkill field in the future, as compared with the potential production and shipment from the Wyoming and Lehigh fields—is the production increasing faster, or not so fast, in one than the other? A. The production has been increasing faster in the Wyoming region, the Northern coal field, than it has in the other. The daily production has been nearly at a standstill in the Lehigh and Schuylkill regions. In the Northern field the daily production has been gradually increasing. The number of days' work in the year has been practically at a standstill for all three regions for a number of years past. It has fluctuated—one year it would go up and down—but the average has been nearly the same for a number of years. Therefore, the increased tonnage per year comes mainly from the increased production of the Northern coal field, and, when the Northern coal field reaches its maximum of daily production, with a maximum of days' work per year, we will have the maximum output for the anthracite region. Since the Northern field has been increasing, and the others have been remaining almost constant, and since the Northern field has the shortest life at the present basis, it will be the soonest exhausted, and, therefore, in order to maintain the production of the State, we must mine larger quantities from the other coal fields, the Lehigh and the Schuylkill regions, later on.

Q. How far has all this subsequent experience and observation borne out the estimate that you made in 1895 of the rate of production and exhaustion of the Reading

Company's holding? Can you testify explicitly as to that, or can you not? A. They have maintained nearly the same rate of production all these years, approximately.

Q. You estimated that the Reading at that time had a life of two hundred and sixteen years, at its then rate of production. Do you remember how much the Reading was then producing? A. Something over 9,000,000 tons a year, I believe.

Q. Have they increased their production, if you know? A. Only slightly, I think.

Q. Not substantially, have they? A. No; some years more, some years less, but I guess it has averaged pretty nearly the same figure.

Q. About that? A. About that now; something over nine or ten million tons. I think that the life that I have given them credit for will eventually be found to be pretty near right. If there happens to be an area or field somewhere where I have made a miss in the calculation, there are other portions of the field where they will get a good deal more than I have estimated.

Q. You said you know of mines in the Schuylkill region in which they are mining veins as low as two and three feet. A. Oh, yes, there are. Mr. Richards, I think, has testified to that himself.

Q. Mr. Reynolds this morning asked you a question, which he apparently read from your article to the Congress of Applied Chemistry, and he asked you whether this was true: "It is impossible to predict, with any approach to accuracy, the duration of life of the supply of anthracite coal in the United States, as there are so many unknown quantities entering into the proposition. It would only be remotely approximate to divide the annual rate of exhaustion into the available supply, as we have above tabulated it." Let me show you the article and ask if that is the article that he referred to, and, if so, will you read to the end of the sentence which he truncated. A. Yes, sir. It goes on: "Because we know the production will continue to increase until it reaches a maximum, and then it will gradually decrease until the supply is ex-

hausted." That would perhaps lengthen the time that it would last.

Q. Have you anything further to say about that? A. Of course, we cannot estimate with accuracy on the future regarding the developments that will be made in the art of mining and using coal and preparing it for market, which will have a great effect on the length of the supply, the length of time.

Q. Will you kindly continue to read the article for the next two sentences, down in the following paragraph? A. "At the present rate of mining, the available coal of Pennsylvania would last about a hundred and four years, but our methods of mining are likely to be much improved in the future, and the results of new discoveries or inventions may change our methods of utilizing it, all of which would tend to conservation, and extend the duration of the supply. In fact, during the past ten years marked advance has been made along those lines, and we may expect it to continue in the future. While the anthracite fields outside of Pennsylvania are important, their tonnage is so limited that the coal from these fields will, in all probability, be exhausted long before this supply from the Pennsylvania region."

Q. And that is the fact, in your opinion? A. In my estimation, yes, sir.

Q. That the Pennsylvania fields will outlast everything else? A. Yes, sir.

Q. The rest are comparatively unimportant, are they not? A. Yes, sir.

Re-cross examination.

By Mr. Reynolds:

Q. I understood you to say this morning that you knew of mining, in the Wyoming region and Lackawana properties, of veins twenty inches in thickness? A. One particular place only, in one mine. I do not know whether they are mining now. They were a couple of years ago.

Q. I understood you to say also that you knew of no

place in the Schuylkill region where they were mining any vein that thin? A. Yes, sir; I do not know of any.

Q. I understand you also read Mr. Richards' testimony very carefully? A. Yes.

Q. And that there is an absolute, square issue between Mr. Richards and you on the question as to whether thinner veins can be mined in the Schuylkill region commercially, or in the Wyoming region? A. No, I do not think there is. The testimony does not show it. I think if he came here to swear to that thing, he would swear just the same as I do.

Q. But he has not, so far sworn just as you do? A. No, I do not think so.

Q. So, on the record as it stands now, you do not agree with Mr. Richards? A. No. Mr. Richards testifies that certain conditions with respect to the three-feet veins would make it appear that certain things were so, but he does not say anything about the other conditions, that make the opposite the actual fact.

Q. He does say, does he not, that you were unfair in assuming in your estimate that you could mine veins in the Schuylkill region one foot thinner than you could mine them in the Wyoming region? A. Yes, perhaps he does do that.

Q. And there is a square issue between you and him on that, is there not? A. I do not know.

MR. COUDERT:—I object to that as a mis-reading of the testimony.

MR. REYNOLDS:—I am asking the witness. That is my understanding.

THE WITNESS:—I do not know. If he says yes absolutely, then I would say there was, but I do not believe there is any case here where Mr. Richards particularly says—he says here Stenographic Notes, page 1785 (printed page 978), "The justification stated by him is because of the pitch. But experience with the Schuylkill region and with the Wyoming comes back again to the statement made before as to the character of veins. The beds in the Wyoming being firm, the Schuylkill region beds being broken, and heavy pitches, would make it appear to me that the balance should be on

the Schuylkill side." Now he does not go on and say that, with the thin veins in the Northern field, you have to mine enough rock to make head room for the men and mules and cars and all those things, while in the Southern field, where the veins are pitching, you can stand upright and you do not have to do those very expensive things. Then he does not mention also that, in mining an acre in the Southern field, you get more coal in the pitching veins, other things being equal, than you do in a flat vein, consequently you can afford to spend a little more money to get out the one and a half times as much coal, for instance, as you get in the Northern field. He mentions something about the crushed coal and the interstratified refuse, but that part of it, the interstratified refuse, is about the same in both fields. I will admit the crushing is more in the Southern field than it is in the Northern, but they are using that crushed coal clear down to the same size that they are using the other coal in the Northern field, the same small sizes.

Q. You understand that Mr. Richards criticized your assumption that in the Wyoming region the coal measures would be mined only down to four-foot beds, while in the Schuylkill region they would be mined down to three-foot beds—that is, to beds thinner than in the Wyoming region? A. Yes.

Q. You understand that he criticized that, do you not? A. Yes. In one place he says he thinks it ought to be turned around, but at that time that was the experience of the region. I did not say it would continue to be so forever, understand.

Q. Mr. Richards evidently thinks exactly the contrary from what you thought when you made this table. A. If you can find the place where Mr. Richards has actually sworn on that question in any of these suits, I do not believe he will bear that out.

Q. What you just read? A. But that does not say that.

Q. He says you ought to just turn the factors around.

A. Yes—no, he was asked "He has just turned them around?" and he says "Yes, sir." If he says that, we take a square issue on that, if he agrees to that.

Q. Right on that proposition you are reading from his testimony? A. Yes.

Q. And there is an absolute, square issue? A. Yes, sir, on that question.

Q. Between Mr. Richards and you, on that question? A. Yes, sir.

Q. I want to bring that out perfectly clearly. A. Yes, sir, in this connection there is.

Q. So that the Court has either got to agree with you or with Mr. Richards? A. One or the other, that is right.

Q. That is the plain proposition put right up to the Court? A. Yes, sir, that is right.

Q. Now, going to your criticism of Mr. Huber's criticism of you on the assessors' estimates of coal in the Wyoming fields, I understand that, in your exhibit in 1896, you threw into what you called "uncontrolled tonnage" in the Wyoming field, the item of 26,000,000 tons? A. Oh, no, that is not true.

(Question read.)

Q. Take the last total on the left-hand side of the page. A. This summary?

Q. Yes, you have the item there "Uncontrolled tonnage, 26,910,650 tons," in the column devoted to the Wyoming region? A. And a couple of asterisks in front of it.

Q. Let us read those into the record. The asterisk C says: "This tonnage is contained in undeveloped lands in private hands, still subject to purchase or lease?" A. Yes, sir.

Q. Then the note D, at the same figure, says "The region containing a major part of this tonnage is accessible by the Lehigh Valley, Delaware, Lackawanna and Western, Delware and Hudson, Central of New Jersey and New York, Susquehanna and Western?" A. Yes.

Q. "The remainder accessible also to the Erie and Wyoming Valley, Erie, Ontario and Western, and Pennsylvania Railroads?" A. Yes, sir.

Q. Now, then, that was one part of the independent coal which some of the railroads might have acquired since you made your estimate in 1896, was it not? A. Some of it they did acquire.

Q. But not all of it? A. No, there are a few of them have not been sold yet, just one or two properties.

Q. In that same table you give the tonnage controlled by contracts, 101,461,750 tons, in the Wyoming region? A. Yes, controlled by contracts 101,000,000.

Q. That tonnage, controlled by contracts, was coal that was otherwise independent, except for the contracts? A. Yes. It was owned by other people, and they had royalty contracts with the railroads, you know; that is, they shipped their coal over different railroads, and some of them shipped it over two or three railroads.

Q. I do not understand you to have any doubt about your statement in that table as to the tonnage owned by the various railroads? A. The tonnage, some of it, was owned by the railroads and operated by the railroads; some of it was owned by the railroads and operated by independent operations, under lease.

Q. But the railroads owned it? A. But the railroads owned the coal, yes. That is my understanding of it, at that time.

Q. Do you mean to assert that any of the railroads have been to any extent, since 1896, selling their respective coal holdings to some other railroad? A. They have, some of them sold them all back again.

Q. Where? A. The Delaware and Hudson sold some land to the Wilkes-Barre and Eastern, and they mined it for half a dozen years, and then sold it back to the Delaware and Hudson for more than they paid for it in the first place.

Q. So it was still railroad owned coal? A. Still railroad owned coal, yes.

Q. And would, therefore, appear either in the D. & H. or the Erie at the present time, would it not, or any time between 1896 and to-day? A. It would appear in some of those, yes.

Q. Do you know of any other place where a railroad has sold any of its coal properties to any other railroad? A. There was a whole lot of coal owned by individuals, that was included under some of these railroad headings, that was sold.

Q. That was tonnage held by contract, then? A. Yes.

Q But I am talking just about the tonnage owned, now. A. The Lehigh Valley had a lot of tonnage down at Forty Fort, which I think I estimated as being part of the ownings which went to the Temple Iron Company—Forty Fort and Harry E. Collieries. Swoyer & Co. were mining it, and that went to the Temple Iron Company. Then there is some of the Lehigh Valley holding that the Raub Coal Company are mining now, independents, and there is some of the Lehigh Valley coal that they are mining at a colliery there at Miners Mills, the Healy Coal Company, I believe, and I think it was Lehigh Valley coal that the Stevens colliery operated for a good while, but now it is under the head of the Lehigh Valley. I am not positive of that. Then the Lehigh Valley Coal Company owned, as I understand it, about a half interest in the Eberhardt lands, up at the head of the Valley, and they and Connell at that time were mining Lehigh lands. Now the Lehigh Valley have the whole thing. I do not know whether there are any other places.

Q. I notice that most of those that you mention are acquisitions by the Lehigh Valley? A. Yes.

Q. Then I understand it to be your view that it would be unfair for Mr Huber to criticize your estimate of the Lehigh Valley, because the Lehigh Valley in the interim having acquired all those properties, naturally they would have more coal now than you would have estimated they would have in 1896? A No, because those collieries were all credited to the Lehigh Valley in my estimate before.

Q. Then why would they not be just the same? A. But now they are not credited to the Lehigh Valley, the taxes do not go to the Lehigh Valley. When the assessors tax the Forty Fort Coal Company, the Temple Iron Company is taxed, and, when you take the assessments, you only get the assessments that go to the Lehigh Valley itself, and there are several of those companies, which I included as Lehigh Valley, who pay their own taxes, you see, and when Mr. Huber says they are assessed with so much, that does not include all the collieries that I in-

cluded in my estimate. Take for instance the D., L. & W. ——

Q. Let us stay right with the Lehigh Valley, until we get that clear. Where would it go to, then, if it did not go to the Lehigh Valley? It goes into the independent column? A. Yes. Here is the Lehigh Valley, for instance. There are 10,799,988 tons produced by the Temple Iron Company in that region. That he referred to. They pay their own taxes, and when Mr. Huber says that the Lehigh Valley is assessed with so much coal, he leaves out the coal that is assessed to the Temple Iron Company, he leaves out the coal that is assessed to the Alden Coal Company and several other concerns.

Q. And that coal all ought to go into the independent column? A. No, it ought to go under the Lehigh Valley heading, to make it compare with mine. He ought to put in under the Lehigh Valley heading, not only the land assessed to the Lehigh Valley, but the land that is assessed to all those other companies.

Q. That is, the independent coal? A. The independent coal, yes, and that would make an assessment of coal far in excess of 61,000,000 tons.

Q. For the Lehigh Valley? A. For the whole thing, the Lehigh Valley and the others.

Q. And it would reduce correspondingly the assessment of the independents? That is, you could not count it twice? A. No, you could not count it twice, but you would have to count it when you go to compare it with my estimate.

Q. When you compare it with your estimate, you would have to subtract it from the independents and put it into the Lehigh Valley, in order to make it comparable with yours? A. Yes. When you are going to compare the assessments now, in order to compare them with mine, you have got to compare the assessments on the same lands, don't you see, but Mr. Huber compared only about half the lands.

Q. He took some of those from the Lehigh Valley and threw them into the independents? A. He did not do any-

thing with these others at all. He did not pay any attention, say anything in his testimony about them.

Q. About the independents? A. About these independents here.

Q. How do you know? A. He gave a long list of independent operators in his testimony, but he did not specify which ones of those were included in my estimate for Lehigh Valley coal He said he could not do that. He acknowledged that, right in his cross examination, that he could not make an intelligent criticism of these different companies, but he said the total would be right.

Q. Would the total be right? A. No. The estimate of the total would not be right, because the assessors now assess pretty near double the quantity of coal to the same cubical volume.

Q. But the assessors would not be able to find any more than the total number of owners and the total coal in the community? A. No; he means the total of the whole region, you see.

Q. I mean the total of the whole region. A. The total of the whole region, the assessment for the total coal that is left, if you take the total coal that is left, according to the assessing officers, and compare it with my deductions, it will not refute my deduction at all, simply because they are now mining more coal out of the same land than I gave them credit for.

Q. They are not mining anywhere outside of the Wyoming region, are they? A. No, but mining right in the Wyoming region they are getting more coal from an acre of land now than they did then.

Q. All that outside coal would have to come from 127,000,000 tons of your estimate in 1896, would it not, just the Wyoming region? A. No, it comes to 179,000,000 tons, I think he said, I estimated for the Lehigh Valley.

Q. I am not talking about the Lehigh Valley. I am talking about all the coal that you estimated was in the Wyoming region not owned by the railroad coal companies. That included, as you testified just a few minutes ago, one hundred and one and a half million tons controlled by con-

tracts? A. That would include what I estimated would be controlled by contracts, but it would not include all of the individual operators, you know.

Q. And then 26,000,000 tons of what you called the uncontrolled tonnage? A. That would be added to it.

Q. Adding those together do you not get the figure that I stated a moment ago, of 127,000,000 tons? A. Yes.

Q. And that is where the opportunity for variation between you and Mr. Huber would come in, as I understand you? A. Yes, and in some other cases here. I refer to the changes that have been made.

Q. To refresh your recollection, you referred to the D. L. & W. A. Take the D. L. & W., for instance. They were getting coal at that time from the Plymouth Coal Company, the Kingston, Middle Lehigh, Black Diamond, Clear Spring, Pierce, Pine Brook, Capouse, Pancoast, Providence Coal Company, Meadow Brook, National, Mount Pleasant, Mount Jessup, Anthracite, Avondale, Chauncey, Parrish and the Ridge.

Q. Twenty-one in all? A. Some twenty-one collieries. Now out of these there are only five that would be included in the figures that Mr. Huber gave.

Q. For the assessment against the Lackawanna? A. Yes.

Q. So that that would naturally at the present time very much understate the coal of the D. L. & W. as compared with what they would have had under your estimate, if the twenty-one operations had continued under the D. L. & W.? A. If they had continued under the D. L. & W., they would have shipped more coal than they did at that time.

Q. And if you had those twenty-one counted in the assessment of the Lackawanna —— A. Excuse me; part of those, you understand, are still shipping on the D. L. & W., but they pay their own taxes.

Q. But the result of that would naturally be that the assessment figures would be under what you would make them on the basis of having the twenty-one people under the Lackawanna? A. It would if they assessed them at the same rate as I do, but they assess them at double, pretty

near, you know, and that increases the quantity that the assessors would show for the D. L. & W. If we both figured on the same rate per foot-acre, then it would, but we did not figure that way.

Q. But the general effect of the situation would be that all but five of the twenty-one independents having left the Lackawanna in the interim, the tonnage left in the Lackawanna would now be less than it would if they had remained in there? A. Oh, yes.

Q. So that the estimate would have been, by Mr. Huber's method, less naturally than you would have made it? A. Then the Lackawanna may have gained one or two collieries since, you know, which you have not referred to.

Q. The testimony is they have gained one. A. Yes, they gained one I think.

Q. Now, as I understand your testimony, you rather increased your factor of coal shipped to market in the Wyoming region, above what experience had demonstrated would be the factor? A. Yes, a little bit.

Q. You increased it from 571 tons up to 650, I believe? A. Yes.

Q. With your familiarity with the Schuylkill region you are aware, are you not, that the Chamberlin was not opened until just about the time you made your estimate, in 1895? A. I do not know. It seems to me there was an old mine, was there not, before that?

Q. Do you not recollect the conditions? A. Yes, I know. As I understand it, I think there had been an abandoned mine on that property before these people bought it. It was abandoned and they re-opened on that deposit, I think.

Q. As a matter of fact, to refresh your recollection, were not the old minings at Chamberlin on the outcrop? A. I do not know. I think they were, but there was a slope driven there, that I thought was driven by the old people. It might not have been. As far as that goes, it was rather a failure on the part of those Northern people coming in there.

Q. Captain May thought he had 30,000,000 tons of coal there, did he not? A. I do not know how much he thought he had. He thought it was a good proposition, I believe.

Q. That was abondoned about four or five years after your estimate of the Southern region? A. Yes. A good deal of what they thought was good coal, was crushed so fine that it was not marketable.

Q. They could not get it to market at 650 tons to the foot-acre? A. There was coal there, but it was crushed fine.

Q. They could not get it to market? A. They could not sell it. It was not marketable coal.

By Mr. Coudert:

Q. You are speaking as of that time? A. Any time, I guess, unless you take into account the briqueting of coal, which may come in the future. In its condition at that time, you could not sell it.

Q. Is that impossible now, the briquetting of coal? A. Oh, bless you, no.

Q. They do it in Europe, all over? A. It is a question of economy. When the briquetting of coal can be done as cheaply as you can mine it, it will be done. It is a question of cost.

By Mr. Reynolds:

Q. The Thuron operation was opened the very year you were making your estimate, in 1895, was it not? A. I do not remember the exact date, but somewhere along there.

Q. And that was abandoned within three or four years, was it not? A. They mined it for a good while, and then I do not know whether they sold it or what they did with it. It is not mining now, anyway.

Q. They did not mine it after 1901, did they? A. I do not think they did.

Q. The Albright was opened that same year, was it not? A. I do not know about the Albright.

Q. It is abandoned, though? A. I know they did open it and mine it, but I do not know whether they are mining it now or not. I do not think they are, because young Albright has another job.

Q. You certainly do know about the great York farm operation? A. That was opened, and abandoned after

while, on account of the crushed condition of the coal in the seams.

By Mr. Coudert:

Q. Would you mind explaining "crushed condition," while you are there? A. It is crushed so that, when you dig it out, it is all dust, dirt. It does not come in big pieces that you can market. When they tried to prepare it, the prepared coal was such a small quantity that it made a failure of the operation. They could not sell enough to make it pay.

By Mr. Reynolds:

Q. As a matter of fact, the coal measures in that Southern region are very much inclined, are they not? A. Yes.

Q. As the result of folding? A. Yes.

Q. So that it is like trying to fold a book; the veins rub on each other and grind it down to dust? A. Grind down, yes.

Q. There is a great deal of that in the Southern region, is there not? A. Yes; there is a great deal of it, and the really crushed condition, where the coal is no good, is usually on the overturned portions of the basin.

Q. On the anticlinal or the sinclinal? A. On one side of the anticlinal.

Q. Where the fold comes? A. Yes. It is folded that way, see. (Illustrating with sheet of paper.) On this side, where the coal vein is right side up, it is usually good; but under, this side, where it is upside down, it is usually folded so it is not workable. But you understand that would have no particular bearing as affecting my estimate, because, in making my horizontal foot-acre estimate, all that overturned part would come in the foot-acre. It would be a tremendous quantity of coal, but it would not be very much good, you know.

Q. I understood you to say that, as to the Dauphin basin, it was an unknown territory; Mr. Richards does not know about it, nor does anybody else. A. They have made some probings there, but there is a large area of it that is practically unknown. They do not know what is in it. In some portions, on the eastern end of it, they have had mines

and worked them for a long time, and some of the mines are still working. Some are stopped, I understand. At the same time, the major portion of the basin has only been tested here and there.

Q. Do you know of any operation in the Dauphin basin except the Kalmia? A. No, I do not.

Q. When you say that nobody knows the Dauphin basin, Mr. Richards does not know about it—— A. He knows part of it. He knows the portion that he knows about, but the rest of it he does not know.

Q. Do you include among the others that do not know anything about it yourself? A. Yes, sir.

Q. Mr. Richards also included himself. A. He knows more about it than I do, I guess.

Q. He knows more about all that region than you do? A. He does now, but I do not think he did when the estimate was made?

Q. But now he does? A. Yes.

Q. You spoke of people that were not commercially successful in mining in the Southern field. Is it fair to translate that phrase of yours into this phrase: that the people were not able to ship their coal in commerce to market and realize a sufficient profit on it to justify the continuation of their operations? A. Yes, the operations of the mine were not profitable. Of course, to amplify that, I do not mind saying that I think the Reading have a good many mines there that are not profitable, and so have all the fellows that are mining, but they have some very profitable ones, and they average up and produce tonnage. If these individual operators had a railroad to ship their coal over, and could get a rate on it, maybe they would not have been so unprofitable, these mines.

Q. Are you also an expert on freight rates? A. No, sir.

Q. Your remarks on freight rates——A. They are very general.

Q. And not founded on any knowledge? A. No, general knowledge—just common knowledge; no detailed knowledge at all.

Q. A very common knowledge? A. Yes—that everybody ought to know.

Q. Is your experience in rate-making that of the Interstate Commerce Commission at all, or comparable with it? A. No; I have not had experience in that line.

Q. None at all? A. I have never made any rates for anybody.

Q. I understood you to say that, while your prophecy had hardly been justified in some regions, showing that you had over-estimated it, in other regions you had very apparently under-estimated it. A. You did not state that exactly right. I did not say that it was over-estimated. I said if, perchance, I had underestimated in one place, it is quite likely that in other places I would over-estimate. It would average up, I mean, the good and the bad. I maintain the integrity of the estimate all through now, just the same as it was, and I think still the Dauphin basin is not at all over-estimated, in estimating, as Mr. Richards says, 100,000,000 tons in it.

Q. Although you do not know anything about it? A. Although I do not know definitely about it.

Q. You still feel perfectly confident? A. Yes, sir, I think the time will come when they will get 100,000,000 tons out of that Dauphin basin, some day.

Q. Although you do not know anything about it? A. No, cannot know anything about it.

Q. And you feel that, if you did underestimate in one region and overestimate in another, that you came about right on the whole? A. On the whole, yes, sir; now understand, I think I came out as nearly as it is possible to make an estimate of such an abstruse, flexible matter as this is, and there was such a tremendous amount, as I said, of conditions good, bad and indifferent entering into it, that this method I have taken eliminated a quantity of those things; that is, on the experience of the region in the past and basing the estimate on the past experience, it is a conservative one for the future.

Q. Whether it hits —— A. Whether it hits some places or others. It may miss in some places, but it will hit in others.

Q. You yourself feel that it does not hit in some places? A. Why, yes. I think there are some mines that are not good mines and it is an overestimate for those. There are other mines that are a great deal better, and it is an underestimate for those. The 650, understand, is not a constant, I think you called it a constant there. There are mines in these regions which perhaps would not produce over half that much per foot-acre, you see. There are others that might produce twice that. But it averages up; the past experience averages up. I did not attempt to make a detailed estimate for each one of those mines, you know, like Mr. Smith did, for instance, in his testimony for some of them. He estimated the actual quantity of some 27 of the mines in the anthracite field, and he figured the actual experience was forty per cent., they had actually run forty per cent. of the coal. But I did not go at it that way. I took the whole region and then got an average experience for the fifty odd years in the past, and I think that will be conservative for the future.

Q. You feel that, while it would not do to invest money on the estimate as to some particular region —— A. No, sir, I would not have anybody invest any money on the basis of this, in any particular mine. I think if they want to invest money, they want to go and examine that mine and find out the peculiarities of that individual mine and make their own estimate as to that mine. You cannot base the amount of tons coming out of any particular mine on what this thing says. They would be terribly hit in some cases, and might make a fortune in others.

Q. Taking the seventeen smaller fields which the whole region is divided into, is it fair to say that the same observation would apply, that you would hit some of the seventeen fairly close and some of the others, perhaps, would be some distance off? A. Yes, I think so. It is an average estimate.

Q. That is, you feel that the sum of the parts is about right? A. Some of them will be undoubtedly about right. Some the estimate will overrun and some the estimate will underrun.

Q. You feel that the aggregate of all the seventeen regions is about as good as could be made? A. I think it is reasonably correct, as good as could be made in any way, except to make such a detailed estimate as you spoke of, that you were asking me about here some time ago. That would take a long time and would be a very laborious job.

Q. And that would be necessary, would it not, to show the amount of coal tributary to any given railroad, for instance? A. If you want to get at it in a really accurate way.

Q. That would be a very serious study? A. Yes, sir, no doubt about it.

Q. I think you a little bit misapprehended the point I asked you about before lunch, in comparing the one hundred and sixty-three-year period mentioned in your prophecy of 1896, with the sixty-three year period in your prophecy of 1912. As I listened to your explanation, it seemed to me you thought my question was making a comparison between the sixty-three-year prophecy for the Pennsylvania Railroad in 1896, with the one hundred and sixty-three-year prophecy of the Central Railroad Company of the same year. Therefore, that explanation is not responsive to my question. A. I might have misunderstood it.

Q. My question was this: in your estimate in 1896, you gave the tonnage of the Central Railroad of New Jersey as such that it would last, at the then rate of mining, one hundred and sixty-three years? A. Yes.

Q. Now my question was not anything about the Pennsylvania Railroad, as you supposed. A. I supposed you drew attention to the fact that the Pennsylvania Railroad was sixty-three years, and in the Lehigh region something was sixty-three years.

Q. I saw that from your explanation. I did not mean that, nor I did not say that. What I called your attention to was this: that years later, in 1912, when you came to make another prophecy on this subject, you prophesied that the Lehigh region would last for sixty-three years. A. Yes.

Q. And that the Wyoming region would last for forty-one years? A. Yes.

Q. Then I called your attention to the fact that the Central Railroad properties were in the Lehigh and the Wyoming regions? A. Yes.

Q. And yet you gave the Central Railroad Company of New Jersey a life of one hundred and sixty-three years? A. You see, the Central had properties in all four regions. They had a very large quantity of coal and were shipping a comparatively small tonnage to market, as compared with the tremendous tonnage that goes out of the Northern field, you see, so that there is no contradiction in that at all. It is perfectly possible. The Northern field, for instance, shipped over 44,000,000 tons in 1910, and that, divided into what I have figured for them, would last forty-one years. The Central Railroad Company, according to this estimate, had coal in all four of these fields; had 677,000,000 tons altogether, and they were shipping only 5,000,000 tons a year, so that, on that basis, it would last one hundred and sixty-three years.

Q. You say that the Central Railroad Company of New Jersey had tonnage in all four regions? A. I mean the collieries that shipped over the Central Railroad, I mean the Lehigh and Wilkes-Barre ——

Q. Where had they any tonnage in the Western Middle field? A. I meant the Wyoming field and the Hazleton field and the Panther Creek field—the Hazleton-Panther Creek goes to the Lehigh, you know—and the Southern field. I do not think they have in the Western Middle field.

Q. They have not in the Pottsville field? A. Yes, they had then, the Alliance.

Q. You refer to the Alliance? A. Yes. Those belonged to the Central Railroad at that time, all those properties that were shipping over the Central at that time.

Q. The Alliance Coal Company you throw into the Lehigh Coal and Navigation tonnage? A Yes, the Lehigh Coal and Navigation Company.

Q. And that tonnage in 1896 you put as 170,000,000 tons? A. The Alliance?

Q. Yes. A. There are some others, too.

Q. The Alliance would take care of that, then? A.

Yes, and it may be there are some others besides the Alliance. That is what I have reference to, in the Southern field.

Q. You have 170,000,000 tons, which includes, you are sure, the Alliance? A. The Alliance is part of that.

Q. And perhaps others? A. Perhaps others, I do not know.

Q. So that it would take in all that you have attributed to the Jersey Central in that field? A. I think so, yes.

Q. And that is 170,000,000 tons? A. Yes.

Q. Then, as I understand your explanation, it is this: that, although the 350,000,000 tons tributary to the Central Railroad of New Jersey in the Wyoming region will last forty-one years and the 359,000,000 tons of the Lehigh region will last sixty-three years, the probability is that the throwing into that tonnage of the 170,000,000 tons of the Alliance Coal Company and others, that you cannot think of, will increase that duration to one hundred and sixty-three years? A. On that basis you include in that the Lehigh Coal and Navigation, you see, increasing that to one hundred and sixty-three years. You will see in my estimate I am giving the Central Railroad a pretty good allotment of tonnage there.

By Mr. Coudert:

Q. By applying the same method of calculation, it would increase it that much? A. Yes.

By Mr. Reynolds:

Q. It just explains it? A. It explains it. Whatever the sum total is, the total tonnage tributary to the Central Railroad Company of New Jersey, went into the tonnage, and the total shipment for that year was the divisor, so that made it one hundred and sixty-three years, on that basis.

Re-redirect examination.

By Mr. Coudert:

Q. Have you seen anything in these various criticisms brought forth by witnesses for the defendants that would affect your estimate as far as the relative proportion of transportable coal in the Northern and Southern regions

is concerned? I mean by the witnesses for the defendant, the witnesses Huber and Richards, whose testimony you have read.

MR. REYNOLDS:—I object to that question as, of course, improperly put. We do not know what the witness knows about what has been testified to, or any of the foundation of the answer that he may make.

A. No, I do not know of anything. There are some things that I do know that might affect the thing, but not from their testimony.

Q. As far as you know, there is nothing there that affects your figures as to the relative proportions of coal in the two regions? A. No, not at the present time—not at the time this was made.

Q. Do you agree with this statement, referring to the Southern field, by Mr. Griffith: "The lower limit of profitable mining on a pitch, where coal will run to the loading point is three feet, while in flat workings, where the car must be taken to the working facing, a profitable business cannot be done on much less than four feet?" Is that substantially right? A. Yes, sir; that is the way it was when I made this estimate.

Q. And that agrees with your view? A. I think perhaps you might reduce both of those a little bit now.

Q. So that, at the time you made that estimate, that statement that I have read to you was a correct and honest statement? A. Yes, sir.

Q. Now you dissent *in toto* from the statement on page 978 of the printed record, made by Mr. Richards, "That is, there would be more reason, from a scientific and practical standpoint, of saying you could mine down to the three-feet beds in the Wyoming region and could not go below the three-feet beds in the Schuylkill region?" A. Yes, sir, I do.

Q. The first statement that I have read to you is on page 950 of the record, and is made by Mr. Richards. Therefore, you agree with Mr. Richards, speaking on page 950, and dissent from Mr. Richards on page 978? A. Yes, sir.

Q. So that you prefer his testimony on that point on

page 950 to the opposite testimony on page 978? A. Yes, sir.

Q. You are convinced that the first testimony is correct, namely, that on 950, and accords with your estimate, and that his second statement, some pages further along, is incorrect? A. Yes, sir.

By Mr. Reynolds:

Q. And you are still convinced that the Lackawanna Railroad is mining coal down to twenty inches in the Wyoming field? A. I do not know whether they have stopped or not, but they did at one time. In one spot. They mined it in one vein because they wanted to get the coal out of the other one. It was not profitable, of course.

Q. And the Delaware and Hudson are mining twenty-seven-inch veins? A. I do not know about that. That may be; very likely they are. They are pretty short of coal, and they will mine anything that they have got, in these thin veins.

Q. And thirty-inch veins are being mined very frequently in the Wyoming region? A. Where they exist, in mines that have thicker veins.

By Mr. Coudert:

Q. Who retained you in the recent case, in which you testified for the Reading—what individual, Mr. Richards? A. No. It was the man that had charge of their lands.

Q. Was your testimony as to the value of coal lands? A. Yes, sir.

Q. And you testified as an expert on their behalf. Do you know whether the railroads keep detailed estimates of their minable coal? A. I do not know; I do not think they do. I do not know. They make them up, doubtless, for tax assessments and things of that kind. In fact, they would have to make them up, to get these tonnages Mr. Huber referred to.

Q. Aside from those they make for tax assessments, you do not believe they have any? A. I do not believe they do, but I do not know.

Q. Why do they not have any? A. I do not know that.

(Adjourned until Tuesday, May 5th, 1914.)

Met pursuant to adjournment Tuesday, May 5th, 1914, 11 o'clock A. M., at No. 2 Rector Street, New York City.

Present.—The Examiner. Messrs. Coudert, Kingsbury and Gordon, for Government. Mr. Reynolds, for defendants.

Frank M. Swacker, having been duly sworn, was examined as follows:—

By Mr. Coudert:

Q. Please state your address and business. A. Department of Justice, Washington, D. C.; special assistant to the Attorney General.

Q. I refer to the testimony of Mr. Auch, on page 550 of the printed record, referring to the statistics of anthracite and bituminous coal carried by the Wilmington and Northern; in his testimony he says that in the years 1885, 1890, 1894 and 1898 the anthracite and bituminous are grouped together, due to the fact that, during those years, there was no separation made as between anthracite and bituminous coal transported. Have you examined the reports of that railroad to the Interstate Commerce Commission, and have you found therefrom how much anthracite and bituminous they transported in the years from 1894 to 1898? A. I did.

Q. I show you these figures and ask you if those are the figures that you copied from the reports on file with the Interstate Commerce Commission? A. They are. I did not look back of 1894, and I do not know what they show. I just looked at those years there.

The statement referred to is as follows:—

Year.	Anthracite.	Bituminous.
1894	166,874	57,752
1895	180,186	100,451
1896	197,380	151,033
1897	192,739	121,247
1898	176,204	195,520

MR. REYNOLDS:—In fairness to Mr. Auch, I would like to note at this point that the Reading Company did not lease the Wilmington and Northern until 1900, and it is manifest that the records that Mr. Auch had were not as complete as the records which were sent by the Wilmington and Northern to the Interstate Commerce Commission. I very gladly accept the amendment that the Commission is able to furnish, from the original files of that company.

By MR. REYNOLDS:

Q. I understand that the years which you have read into the record are the fiscal years ending June 30th? A. Yes, sir.

Q. And that the years on printed page 550 were for the year ending December 31st, down to and exclusive of the year 1900? A. Yes.

Q. So that the two sets of figures are not strictly comparable? A. No, but they are relatively so, of course.

By MR. COUDERT:

Q. Will you please state your experience in connection with the railroad business generally? A. I have worked for railroads, or been associated with railroad matters, since I was eleven years old; twenty-four years, that is.

Q. In what capacities? A. I have worked in local offices, general offices, in the accounting department, engineering department, traffic—in various branches of the business. During the last five years, up to recently, I was with the Interstate Commerce Commission.

Q. What has been the nature of the work you have done for the Interstate Commerce Commission? A. Investigating generally all sorts of matters, rate matters and practices, and transportation matters, and anything of that kind that I might be given.

Q. All manner of details in connection with the railroad business? A. Yes.

Q. What railroads here in the east have you had occasion to become quite familiar with? A. During the last two or three years I was with the Commission I was located almost all the time in New York, and, in that way had to do with all of the roads in what is known as trunk line ter-

ritory, and also New England roads; that is, as to those around this territory, the New York, New Haven and Hartford, the New York Central, the Erie, the Delaware, Lackawanna and Western, the Delaware and Hudson, the Lehigh Valley, the Pennsylvania, the Central Railroad of New Jersey, the New York, Ontario and Western, the Philadelphia and Reading, but not so much it as others, it being more, in a sense, a Philadelphia road.

Q. Have you quite a general familiarity with the general anthracite coal roads and their routes and methods? A. I have.

Q. Which roads do you class as the anthracite coal roads? A. The Ontario and Western, the Erie, the Delaware, Lackawanna and Western, the Delaware and Hudson, the Central Railroad Company of New Jersey, the Lehigh Valley, the Philadelphia and Reading, the Pennsylvania, and, in a smaller way, the Lehigh and New England.

Q. Have you some familiarity with the all rail routes by which anthracite coal goes from the mines to New England markets? A. I have.

Q. Have you examined the testimony of Mr. Koons, on page 1560 of the stenographic minutes (printed page 832) as to the all rail routes to New England, and have you any comments to make upon his testimony on that point? A. Yes. The statement needs a little explanation, I suppose, in this way, as to just what is meant by direct all rail routes. It is a somewhat ambiguous term. You might understand it to mean one, single road tapping the coal fields and either connecting into New England or connecting direct with New England railroads. That is one understanding of the word direct. Or you might mean it as merely direct, without regard to the number of carriers involved—direct as opposed to being circuitous. I assume that his idea is the first definition, that is, a road tapping the coal fields and connecting directly with a New England railroad, or going directly into New England. In the seventeen routes enumerated here, they evidently follow the second definition, and, aside from that, they would reduce really down to only

practically five distinct routes, by reason of the fact that the variations above five are variations in New England. That is to say, one route will be the same, except that it will be the Boston and Albany in New England, and another will be the Central of New England in New England, or the Boston and Maine in New England, and those changes are simply changes within New England, that make the difference between five and seventeen. If you want, I will explain them individually in that respect.

Q. The question of which one considers all-rail routes is very largely a matter of terms? A. That is, direct all-rail routes. Of course, these are all-rail routes, but as to being direct, it would depend on what you meant, yes. Under the first definition I gave, of what might be understood by direct all-rail route, there would really be only two of these that would be direct all-rail routes; that is, routes which tap the coal fields themselves and connect directly with New England railroads, without more than one road being involved in the route. That would be the Ontario and Western and the D. & H.

By Mr. Reynolds:

Q. What about the Erie? A. You might say, in that sense, that the Erie also connects at Maybrook with the Central of New England, which is a New England road. I guess there would be possibly one more in that respect, unless you wanted to count a connection via Jersey City with the New Haven, but that would not be exactly the same proposition—that is, float around to the New Haven at Harlem River. I believe that is all.

By Mr. Coudert:

Q. In your practical railroad work, and in your work with the Interstate Commerce Commission, have you had occasion to consider the question of railroad competition? A. Yes. It is a very important element of the traffic end of the railroad business.

Q. What factors make two railroads competitive? A. The simplest form would be two railroads having common termini, each able to transport a shipment intended to be

moved; that is each able to transport one single shipment, or any number of them.

Q. Need they be parallel? A. Oh, no; they may not be parallel. They may be competitive as to the traffic between those common termini and not competitive intermediately at all. They might be widely separated, or might cross one another a number of times, and not be competitive at all as to local traffic, traffic to local points on the lines, and yet be competitive as to the traffic between the common termini.

Q. Under what other circumstances would they be competitive? A. In practically the same situation, except that each of them may form part of a through route, there being other carriers involved as between those same termini. That is almost the same situation. It might be they would have only one common terminus, either the point of origin or the destination, and not be capable of each transporting the same particular shipment, but each transporting the same commodity, the commodities themselves being in competition; that is, the shippers of the commodity being in competition, or the sellers of it, in a common market.

Q. Take the case of anthracite coal between railroads tapping the same collieries and going to the same market; would they be potentially competitive? A. Yes; they would come within the first class, the simplest form.

Q. How about two railroads not tapping the same collieries, and yet going to the same markets; would they be competitive? A. If they haul the same class of coal, as in this case, each of them hauling anthracite coal, they would be competitive.

Q. What would the freight rate have to do with the question of competition there? A. It would be a very important factor, extremely so. On a low grade commodity, such as coal, the freight rate, being a substantial part of the selling price at the destination, is a very important competitive element, both as between the carriers themselves and to the commodity itself, the consumers of the commodity.

Q. Do you happen to know about what proportion of

the price of anthracite coal at New York tidewater is made up of freight rate?

MR. REYNOLDS:—That is a question I will have to object to. It is altogether too general. It is impossible for Mr. Swacker to know the answer to that, as you put the question.

Q. Have you any views to express in regard to the relation between coal prices and freight rates?

MR. REYNOLDS:—I still object to that question, as there is no proper foundation laid for an intelligent answer, in the description of the coal or its kind or quality.

By MR. COUDERT:

Q. Referring specially to the larger grades of coal, prepared sizes of coal? A. I understand the general tidewater market price of prepared sizes of coal to be around five dollars and a half a ton, and the freight rate to be $1.55 a ton on prepared sizes, or around that. It varies at various of the ports, I believe, from $1.40 to $1.60.

MR. REYNOLDS:—I move to strike out the answer, on the ground that the witness has not qualified himself to testify, and his answer discloses that he is not testifying with accuracy.

By MR. COUDERT:

Q. You would say that the freight rate, then, was a very substantial factor in the market price in the competition between the sellers? A. On that basis, it being approximately 30 per cent. of the market price, it would be a very substantial factor.

Q. How large a proportion of the price of a commodity must be made up of freight rate, in your judgment, to constitute the freight rate an important factor?

Objected to by Mr. Reynolds as simply calling for a conclusion of the witness, without any foundation for it whatever.

A. On a low grade commodity such as coal, or a thing that sells by weight for a price anything like coal, where the freight rate will amount to as much as ten per cent., or even a good deal less than that, it will often be a very important competitive factor.

Q. Where a railroad forms a link in a part rail and part water route to a given market, and another road forms a link in a wholly different part rail and part water route to the same market, would those two railroads be competitive for a commodity going to that market? A. They would potentially, yes, and often are actively so.

Q. Take the case of anthracite coal, going from the mines by rail to Port Richmond and thence by water to New England, and anthracite coal going from the mines by rail to New York tidewater, and thence by water to New England; would the railroads going to Port Richmond and New York tidewater be potentially competitive? A. They would.

Q. You have no doubt about that? A. No, not at all.

Q. And they would be substantially competitive, too? A. Yes.

Q. Have you read the testimony of Mr. Auch, in connection with the through routes beyond Wilmington, and have you noticed what he said as to the Wilmington and Northern? A. I have.

Q. Have you anything to say in regard to that portion of the testimony and to the causes that he mentioned there why more anthracite did not go that way, or, rather, chose other routes? A. His explanation was that in dealing with the P., B. & W., that is, the Pennsylvania Railroad, and the Baltimore and Ohio, he thought if the coal was tendered to them at Wilmington, they would demand the same division they now receive on that coal delivered to them at Philadelphia; also that the B. & O. and the P., B. & W. dictated the deliveries at Philadelphia, the interchange at that point, instead of at Wilmington. As a general proposition, an originating road, of any traffic, is the dominating road in settling where the interchange will be, or what the divisions will be, and that is true particularly of the anthracite roads, probably more so than any other roads in the country. There are no connections of the anthracite roads, from my observation, that have ever dictated to the anthracite roads either where the traffic will be interchanged or what the divisions will be. The anthracite roads have instead rather dominated those questions. Then again, of course, if the Wilmington

and Northern were not controlled by the Reading, the P., B. & W. or the B. & O. would not be dealing with the road at all, nor could not be going to the Wilmington and Northern to be making deliveries at Philadelphia, for the reason, of course, that the Wilmington and Northern could not do that.

Q. So that the Philadelphia and Reading could route the coal over the Wilmington and Northern, assuming that they had the facilities to carry it, if the Philadelphia and Reading so chose? A. That is another matter, I suppose. He testified, and Mr. Dice, I believe also, about the physical condition of the Wilmington and Northern.

Q. Please just answer the question.

(Question read.)

MR. REYNOLDS:—There is no testimony by Mr. Swacker which qualifies him to answer that question. His only testimony is as to the general proposition. He has not manifested the slightest knowledge of the particular proposition.

By MR. COUDERT:

Q. I might say, assuming that physically the road could carry it, your proposition is that the originating road dictates the route?

MR. REYNOLDS:—As a general proposition.

A. Yes.

By MR. COUDERT:

Q. Now applying that proposition to the Wilmington and Northern, is there any reason, so far as you know, why that should not apply? A. None.

Q. Have you read Mr. Dice's testimony? A. I have.

Q. What have you to say of his reason that the anthracite did not go in greater quantity by the Wilmington and Northern? His statement was that that was due to the physical condition of the road. A. Yes. To begin with, he explained, or Mr. Auch explained previous to that, that the Wilmington and Northern was originally conceived with the idea of handling ore to the furnaces in the neighborhood of Coatesville. Ore is a heavier loading tonnage than coal. The difficulties Mr. Dice mentions are the grades and alignments of the Wilmington and Northern, would make it a far

less desirable route to carry the coal over, from an operating standpoint. The grades and alignment that would handicap the transportation of coal over that road would far more so handicap the transportation of ore, because ore is a heavier loading commodity, providing, of course, that the direction of the grades and the traffic were relatively the same, and his explanation of the grades is that they are in both directions, so that that would cover that phase of it. A road like the Wilmington and Northern, if it were getting, or had reasonable prospects of getting, the anthracite traffic, or could move it over it that way, would naturally revise those grades and alignment so as to make operating condition economical. Of course, with them both in the same ownership it might not be done, because it would be a useless thing; but, if they were in separate ownership, the chances are that the Wilmington and Northern, or a road like it, would have brought its physical condition to the same degree of operating advantage that the Philadelphia and Reading now has to Philadelphia as to that traffic. It could easily be more competing than the other route.

Cross examination.

By MR. REYNOLDS:

Q. I understand that you began your railroad work when you were eleven years old, and continued it for twenty-four years? A. Yes.

Q. As far as I can observe, you have covered about every field in railroading there is during that twenty-four years? A. Everything but the shops.

Q. So you are a very versatile railroad man; and of late years you have been devoting your attention to the law side of railroading, have you not? A. Yes.

Q. I am a little puzzled by the five years you spent with the Interstate Commerce Commission. Does that make you forty years old? A. No, thirty-five. I did not say I worked for the railroad twenty-four years. I said I worked either for the railroads, or associated with railroad matters, for twenty-four years; that was it.

Q. I wanted to clarify that. A. That five years was included in the twenty-four.

Q. I understand that, even under your most restricted definition of the direct rail routes, there are at least five from the anthracite coal regions as a whole to New England? A. No; I said three.

Q. If I may remind you, you have not eliminated those that the Government allege are the direct routes. A. I thought you said outside of those. Yes, that is what the testimony showed.

Q. There are five altogether? A. No. I want to qualify that, too, because the Lehigh and Hudson would not be one, as I figure it, for the reason that it does not itself, as I understand it, tap any of the coal fields.

Q. Then, according to your definition, you would eliminate one of the direct rail routes which the Department for which you work alleged to be one of the three only direct rail routes to New England, would you? A. Yes.

Q. So the petition ought to be amended? A. I do not know about that. I do not know what definition was in the mind of the pleader, but, on that definition, I would say so.

By Mr. Coudert:

Q. It is a matter of railroad terminology? A. It is rather an ambiguous term, even in the railroad itself. It is used both ways.

By Mr. Reynolds:

Q. On your definition of competition, actual and potential, I understand that one railroad running from Sioux City to Chicago, and another one running from Marion, Ohio, to Chicago, both carrying hogs, are competing railroads under your definition? A. No, I did not embrace such a situation as that under my definition. It may be possible that they are, but I said I was speaking in a practical way. It may be that such a situation as that would be, but my reference was rather to carriers that either started from a common field or origin and came to a common destination, or that started from a common origin and went to a common field of destination, but not necessarily in a position to take the immediate shipment. The situation you speak of would be embraced within

that, it is true, but I did not have that in mind. There is just such a situation as that at East St. Louis. There are probably eight or ten roads there, radiating from East St. Louis like a fan, north, south and east, and all of the intervening arc, and each into bituminous coal fields, and those roads are very highly competitive one with another in the transportation of coal to St. Louis. In fact, they have been in pools and all sorts of the side issues of competition. That is involved in that Terminal Railroad Association suit out there.

Q. Then, involving a water haul, a short line railroad in Florida and another one in California, each hauling oranges to the coast, with the possibility of having them transported to the canal zone, would be in competition under your definition? A. There is that possibility, yes, but that is again a case where I did not have that kind of a case in mind. As an illustration of the kind I had more in mind, take the situation of the Old Dominion Steamship Company, out of here to Norfolk, or the Clyde Line to Savannah, each connecting with railroads there taking traffic, we will say, moving from New York to Chicago. Now different roads will take that from those steamship lines, and those roads are highly competitive one with another. The roads themselves recognize that situation in that they are in the same committees of the Carriers' Traffic Officials.

Q. As a matter of fact, I judge, from your assurance in testifying as to routes, that you are aware that the Lehigh Valley and the Pennsylvania handle their coal to New England via New York harbor, their anthracite coal? A. Yes. I think they do. That is my understanding.

Q. In connection with the New Haven, to Southern New England points? A. Some of it, and I think some of it moves by water, although I am not sure whether the Pennsylvania is still handling any water traffic out of here or not; but I think some of the coal ultimately moves by water entirely to Southern New England ports.

Q. But the Pennsylvania all-rail route to New England, you know, is via the Pennsylvania Railroad to Harlem

River transfer, and via the New Haven all-rail to Southern New England, do you not? A. I know that they do send some that way. Whether that is the general route for all of it or not, or the bulk of it, I do not know.

Q. I thought from your positive testimony that you would be aware of a detail of that sort, that all of it went that way? A. No, I am not.

Q. You are sure that some of it does, however? A. I would not even say that now, at this time, for the reason I know the New Haven have been endeavoring for some time to relieve themselves of getting traffic, especially low grade traffic, at Harlem River, and, for all I know, at this time, they may be endeavoring to send such anthracite as they get from the Pennsylvania up by way of the Poughkeepsie Bridge route. Of course, a substantial portion of the anthracite that they handle comes to them from the Ontario and Western and from the D. & H., but particularly from the Ontario and Western, and goes up via the Poughkeepsie Bridge route.

Q. That is a very direct route, is it not, the Ontario and Western? A. Yes.

Q. And the Lehigh Valley route for years has been via Harlem River transfer? A. Yes.

Q. And the Lehigh Valley route for years has been via the Harlem River transfer all-rail to New England? A. I did not know that as a matter of fact, but I suppose naturally that it was.

Q. Under your definition of competition in the anthracite carrying trade, I understand that you would class all of the following railroads as being in competition as to that anthracite transportation: The Delaware and Hudson, the Ontario and Western, the Erie, the Delaware, Lackawanna and Western, the Lehigh Valley, the Lehigh and New England, the Pennsylvania Railroad, the Philadelphia and Reading Railroad, the Central Railroad of New Jersey, the New York, Susquehanna and Western and the Wyoming and Eastern—Wilkes-Barre and Eastern? A. The Susquehanna and Western is part of the Erie. The Wyoming and Eastern is part of the Erie.

Q. Wilkes-Barre and Eastern; I misled you. A. Is that question restricted to the New England traffic, or to all anthracite traffic?

Q. All anthracite traffic. A. Oh, no. There may be local traffic on the line of one of those roads that could not possibly be competitive between two local points. In that case it could not be competitive, that traffic.

Q. Just how are those roads competitive, then? A. They certainly will not be competitive as to traffic between local stations on their lines. Now, there will be a limit to the extent they will be competitive even in traffic destined off their lines. But take traffic destined to some general territory, for instance, New England or Chicago, Ohio or Indiana; these roads would all be potentially competitive for that traffic.

Q. And from the anthracite fields to tidewater, according to your definition, every one of those roads I have enumerated would be competitive with every other one? A. Yes, they would. I will except, for instance, to some extent, those smaller roads you have enumerated like the Wilkes-Barre and Eastern. I am not clear in my mind just what the situation is as to the Wilkes-Barre and Eastern.

Q. So you cross the Wilkes-Barre and Eastern off? A. Yes.

Q. All the others are competitive between the anthracite fields and New York harbor, according to your view? A. That is not the question you asked. You said tidewater; I am assuming tidewater when destined beyond a particular port, because there might be circumstances, if your question was to the port only, which might render them non-competitive as to some traffic. You could conceive of some circumstances that would render them non-competitive as to some traffic just to the port, but if it is for transshipment by water beyond the port, then I would say they were all competitive.

Q. Then is it fair to say that those roads are not competitive to New York harbor? A. No.

Q. I want to find out your definition. A. They are as to some of the traffic.

Q. I want to get your definition down to something concrete. A. They are as to a very large portion of the traffic that they get to New York harbor.

Q. Are they competitive as to all the traffic from the coal regions to New York harbor for trans-shipment, either locally in the harber or beyond? A. I would say yes.

Q. You know that Coatesville is on the Wilmington and Northern Railroad and local to that line. A. I do not think it is local to it.

Q. It is also on the Pennsylvania Railroad? A. Yes.

Q. It is not, however, on the Philadelphia and Reading? A. No.

Q. And the industry there is, in the main, iron and steel? A. Yes.

Q. A large consumer of ore? A. Yes.

Q. You have no knowledge of the relations of the Philadelphia and Reading Railway, the Baltimore & Ohio Railroad and the Pennsylvania Railroad as to the interchange and routing of anthracite between those three systems, have you? A. Not in a particular way, but I have in a general way, from association. I could not probably identify the exact source of information at this time, but I have in a general way a knowledge concerning it.

Q. But not a particular knowledge? A. No.

MR. REYNOLDS:—I would like to note on the record that W. G. Besler has been elected President of the Central Railroad Company of New Jersey, and Charles F. Huber, President of the Lehigh and Wilkes-Barre Coal Company.

Government's counsel offer in evidence excerpt from House Document 1442, 62d Congress, 3d Session, entitled **"Increase in Prices of Anthracite Coal following Wage Agreement of May 20, 1912,"** from pages 126 and 127, as follows:—

"The great anthracite coal reserve for the future lies in the southern field, but it is located at a much greater

depth than in either the nothern or middle basin, and owing to numerous other adverse physical conditions can not be mined except at a decidedly greater cost. The majority of the shafts in this region are from 1,000 to 1,500 feet in depth, and one shaft at least has already been sunk to a depth of 1,800 feet.

"A general conception of the supply available from each of these fields and from the region as a whole may be gained from the following table. This table, which is drawn from a paper prepared by Mr. William Griffith and E. T. Conner,* mining engineers, represents an average of two independent estimates, made, respectively, by Mr. A. D. W. Smith and Mr. William Griffith, both of whom were associated with the second geological survey of Pennsylvania, in the course of which an exhaustive study of the anthracite field was made. The estimate has been revised by Mr. Griffith to bring it completely up to date.

* Our Anthracite Coal Supply and its Conservation, by William Griffith and Eli T Connor. Reprinted from original communications, Eighth International Congress of Applied Chemistry, Vol. XXIV, page 92.

ESTIMATE OF ANTHRACITE PRODUCTION AND RESERVE, 1912—PENNSYLVANIA.

	Wyoming and Lackawanna region.	Lehigh region.	Schuylkill and Mahanoy region.	Total.
Area.....square miles	176	45	263	484
Approximate original content, long tons.....	5,600,000,000	1,850,000,000	11,900,000,000	19,350,000,000
Approximate produced to Jan. 1, 1912, long tons.....	1,054,000,000	312,000,000	634,000,000	2,000,000,000
Approximate one-fourth wasted and three-fourths left in old mines to Jan. 1, 1912, long tons.....	1,695,500,000	523,500,000	1,048,500,000	3,267,500,000
Approximate reserve coal in unmined area, long tons.....	2,850,500,000	523,500,000	10,217,500,000	14,082,500,000
Approximate future production based on saving of 25 per cent. from old mines.....long tons	423,800,000	130,800,000	262,400,000	817,000,000
50 per cent. from new mines..... do	1,425,400,000	502,400,000	5,108,200,000	7,036,000,000
Total available..... do	1,849,200,000	633,200,000	5,375,600,000	7,858,000,000
Production, 1910..... do	44,600,000	10,000,000	20,800,000	75,400,000
Duration of available supply at present rate of exhaustion.....years	41	63	260	104
Estimated ultimate waste of mining, long tons.....	2,696,800,000	904,800,000	5,890,400,000	9,492,000,000

"This estimate of the probable duration of the supply of anthracite is based upon the present rate of exhaustion, which may be either increased or diminished, and upon present methods of mining, which will undoubtedly be considerably improved in the future. These factors, of course, render any prediction of the ultimate life of the mines liable to error, but under any assumption that may be made it is certain that the duration of the supply is practically limited to the lifetime of a few generations.

"The table above quoted indicates that the past production has removed from the field about twenty-two per cent. of the total estimated minable supply. The mining of the past has, however, removed not only the greater part of the coal from the most accessible and cheaply mined veins, but has also much more rapidly exhausted the regions in which the physical conditions are most favorable to cheap mining. As a result the effect on the cost at which the coal of the future can be mined is more seriously affected than would be the case if one-fifth of the total supply had been uniformly removed from the different regions and from the different beds of coal.

"The degree in which the Wyoming and Lehigh regions, in which the physical conditions are most favorable to cheap production, have been exhausted as compared with the Schuylkill region is shown in the following table:*

PERCENTAGES OF PRODUCTION AND RESERVE.

REGION	PER CENT. OF					
	Area.	Total production to 1912.	Original content.	Annual production.	Available reserve.	Total reserve.
Wyoming	36.3	52.2	28.4	59.0	23.5	25.0
Lehigh	9.3	15.6	9.6	13.2	8.0	8.5
Schuylkill	54.4	32.2	62.0	27.8	68.5	66.5

The Wyoming and Lehigh regions, it will be seen, although originally containing only 38 per cent. of the total supply, had up to 1912 contributed approximately 68 per cent. of the anthracite coal. As a result it is estimated that

* Our Anthracite Coal Supply and its Conservation, by William Griffith and Eli T. Conner. Reprinted from original communications Eighth International Congress of Applied Chemistry, Vol. XXIV, page 93.

at the present rate of production the Wyoming region will be completely exhausted in 41 years and the Lehigh region in 63 years. Approximately two-thirds of the future supply of anthracite must, therefore, be mined from the Schuylkill region under the relatively adverse conditions existing there.

"Up to the present time the Wyoming and Lehigh regions are still producing more than their proportionate share of the total output, as is shown by the following figures, giving the amount and per cent of shipments from each region from 1890 to 1911."

Government's counsel offer in evidence extract from pamphlet issued by the United States Geological Survey, entitled **"The Production of Coal in 1912,"** page 24, as follows:—

"It is usual to consider that for every ton of coal that has been mined and marketed, a half ton has been lost, through necessary waste in mining. In the early history of mining in both the anthracite and bituminous regions the percentage of loss was considerably more than half a ton for every ton mined. In the anthracite region it was estimated by the Anthracite Waste Commission, which made its report in 1893, that the recovery was only 40 per cent., or, in other words, a ton and a half was lost for every ton sold. At the present time the recovery in the anthracite region is from 60 to 65 per cent., so that conditions are reversed, and for every ton of coal lost a ton and a half is sold or used."

Government's counsel offer in evidence another extract from the same pamphlet, page 7, as follows:—

"WASHED COAL.—The production of anthracite in Pennsylvania includes an appreciable quantity of usable fuel recovered from the old culm banks by washeries, and the unsightly monuments to the wasteful methods of early times are disappearing from the landscape in the anthracite region. The quantity of coal recovered in the twenty-three years since the first washery was constructed (in 1890) has amounted to about 55,000,000 long tons, considerably more than the total production of anthracite at the beginning of the period. In 1912 the washery product amounted to 4,165,288 long tons. In addition to the coal

recovered from the culm banks, 85,722 long tons in 1912, and 94,647 long tons in 1911, were recovered from the bottom of Susquehanna River by dredges."

Government's counsel offer in evidence other extracts from the same pamphlet, page 176 and page 180, as follows:—

(Page 176.) "Nowadays there is a market for almost any grade of anthracite that will burn. No more coal goes to the culm banks except for temporary storage and subsequent recovery by washeries. The old culm banks themselves are contributing their share to the total production, and these unsightly monuments to former waste are rapidly disappearing. Even the waste from the culm-bank washeries is being made to serve a useful purpose, as it is flushed into the mines and partly fills old workings, where it cements together and furnishes supports to the roof when the coal previously left for pillars is removed. This utilization of the waste prevents, too, the injury to farm lands in the valleys, a serious cause of complaint among the farmers when, as in earlier days, the waste from the washeries was spread over their lands in flood seasons.

"The recovery from the culm banks and the output of small sizes from freshly mined coal constitute about 40 per cent. of the total quantity of anthracite sent to the market. In 1912, out of total shipments amounting to 65,201,253 long tons, 25,690,541 long tons, or 39.4 per cent., consisted of pea and smaller sizes, while the prepared or domestic sizes, including a relatively small quantity of lump or steamboat, made up 60.6 per cent. Of the total of 25,690,541 long tons of small coal, the culm bank washeries contributed 3,155,150 tons, or 12.3 per cent."

(Page 180.) "A considerable portion of this increase in the consumption of small sizes has been due to the operation of the washeries in recovering the usable fuel from the old culm banks in the anthracite region. The first washery was installed in 1890, and 41,600 long tons of coal thus recovered were shipped in that year. In 1907 this recovery had increased to 4,391,082 tons. About the time that washeries were introduced to recover this small coal from the culm banks they were also installed at the break-

ers, with the result that the small sizes, instead of being thrown upon the culm banks, were added to the daily production.

Government's counsel offer in evidence excerpt from House Document 1442, above referred to, **"Increase in Prices of Anthracite Coal,"** page 45, as follows:—

"Causes Which Have Reduced Cost of Production.

"Opposed to these factors which have tended to increase the cost of production, there have been many improvements in the method of working and increasing the output of the properties, which have in turn served to reduce costs. The improvements in the methods of working have been directed not only to the perfection of mechanical contrivances, but to the better and more effective organization of the entire mining system.

"Notable advances have been made in the economy and efficiency of the devices used in the breakers for cleaning and preparing the coal, in the methods of haulage, and in the arrangements for removing water from the mines. At the same time the substitution of vertical shafts for inclined slopes has greatly increased the area that can be worked simultaneously, and has at the same time decreased materially the cost of repairs and maintenance. The use of mechanical methods of haulage has very materially increased the area that can be worked from a single shaft and hence has resulted in greatly increasing the annual output that can be obtained from each operation. These improvements of method are simply to be regarded as instances of a very large number of advances in the technique of the industry. As evidencing their importance with regard to the cost of production, the following quotation from the annnual report for 1908 of Mr. E. B. Thomas, as president of the Lehigh Valley Coal Company, is of interest:

"The improvements already made, together with those now in progress, tend not only to offset the increased expense of mining incident to the greater depth of the

workings and the longer underground haul, but also result in a greater percentage of prepared sizes of coal, the same having increased 9.38 per cent. in the last five years.*

Government's counsel offer in evidence **letter of May 4th, 1914, Geo. Otis Smith, Director, United States Geological Survey,** to G. Carroll Todd, Assistant to Attorney General, as follows:

"DEAR MR. TODD:—With reference to your memorandum requesting certain information concerning the statistics of an anthracite coal production, published by the United States Geological Survey:

"As stated definitely in the coal reports issued annually, the statistics covering the anthracite coal production were from 1897 to 1908, inclusive, prepared for the United States Geological Survey by the late William W. Ruley, Chief of the Bureau of Anthracite Coal Statistics, Philadelphia. Prior to Mr. Ruley's incumbency, the statistics were compiled by Mr. John H. Jones, his predecessor. In their work for the Geological Survey both Mr. Jones and Mr. Ruley acted independently of the anthracite companies, as agents of this Bureau, and reports were submitted to them by the operators on blanks printed by the Survey, correspondence in connection with the work being carried on under the Government frank. After Mr. Ruley's death, early in 1910, the blanks and tabulation sheets were returned from his office in Philadelphia to the Geological Survey, and are now in its possession. The methods employed by Messrs. Ruley and Jones are identical with those now used by Mr. Parker in the preparation of his reports. Statements of production are made by the anthracite companies, and are not the result of any independent or exceptional investigation by the Survey.

"In the Survey's earlier reports of coal production the average value per ton given by Messrs. Jones and Ruley is not the quotient obtained by dividing the total value by the

* Annual Report of the Lehigh Valley Railroad Company, 1908, page 48.

total production for the reason that in those earlier days the colliery consumption, consisting of culm and waste, was not considered as having any market value. During the past ten or twelve years, however, an arbitrary value of from 20 to 50 cents per ton has been placed on this colliery consumption, because anthracite of any size whatever has now a market value.

"In the chapter on coal production, pages 509 and 510, of the report, Mineral Resources of the United States, 1905 (and in subsequent years when shipments by railroads were given), the bituminous records were compiled from the reports of the producing companies, and included the names of the transportation lines over which the product was shipped. The companies are the initial companies only, and the tonnage reported does not indicate the total quantity of coal handled by the transportation systems.

"The table of shipments of anthracite by railroads, on page 511 of the report for 1905, was as stated, furnished by Mr. Ruley. The employment of Mr. Ruley and of his predecessor, Mr. Jones, was found to be advantageous to the Geological Survey because they were able from their records, as chiefs of the Bureau of Anthracite Coal Statistics, to check the returns made to them, and to supply from those records approximate statements of operators who had failed to report to the Geological Survey. At the present time the Bureau of Anthracite Coal Statistics supplies to the Geological Survey records of this character when from changes of ownership, or other circumstances, it has been impossible to secure detailed reports from the companies themselves.

"A sample of the blank used in the collection of anthracite statistics is attached hereto. This style of blank has been in use for about twenty years, with only slight modifications. It will be observed that practically all of the information published in the Survey's reports on anthracite production is called for by this blank.

"Yours very truly,

"GEO. OTIS SMITH,

"*Director*

"Inclosure."

The blank form enclosed with the foregoing letter is as follows:—

"No. Confidential.

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Production of Anthracite Coal in

Please fill out replies to the following queries and return as promptly as possible in the enclosed envelope, which requires no postage. All replies are held confidential, only State and county or district totals being published.

Name of breaker or washery

Names of mines included in this report

State County

Name of operator

P. O. address

Disposition of product:	Long tons.
Loaded for shipment	
Sold to local trade or used by employees	
Used at mines for steam and heat	
Total	

Total selling value of product at mines $

(In "Total selling value" please include value of coal sold locally and estimated value of that used at colliery.)

	NAME OF ROAD.	TONNAGE.
Railroads over which product was shipped		

Total number of full days mine or washery was in operation during the year. (Parts of days should be reduced to equivalent in full days)

Average number of employees during the year, including all persons connected directly with the mine or washery

Superintendent and Manager.

Please reply carefully to queries on the reverse side of this card. (over)

(On reverse side)

If the properties reported hereon were idle because of strikes or suspensions last year, please state how many men were affected and how many days they were idle.

Ans. Number of men idle

Number of days idle by reason of strikes or suspensions

Date of strike:

From to

SHIPMENTS DIVIDED ACCORDING TO SIZES.

Lump
Broken
Egg
Stove
Chestnut
Pea
Buckwheat No. 1
Buckwheat No. 2
Buckwheat No. 3
Screenings

Total

NOTE:—In making above report according to sizes, please give only coal loaded at mines for shipment, and NOT coal used at mines for steam or sold to local trade. (over)."

MR. GORDON:—With reference to the table of rates in the exhibit put in by Mr. Auch at page 561, of the defendants' evidence, I would like to make a reference to the following decisions of the Interstate Commerce Commission, which ought to be considered as part of the record as though fully spread upon the record, although it is not necessary to spread them at length thereupon:

Meeker vs. *Lehigh Valley R. R. Co.*, reported in 21 I. C. C., 29, decided June 8th, 1911.

Meeker vs. *Lehigh Valley R. R. Co.*, reported in 23 I. C. C., 480, decided May 7th, 1912.

Lehigh Valley R. R. Co. vs. *U. S.*, decided by U. S. Commerce Court, the opinion appearing in 204 Fed., 986.

Marion Coal Co. vs. *D. L. & W. R. R. Co.*, 24 I. C. C., 140, decided June 8th, 1912.

Marion Coal Co. vs. *D. L. & W. R. R. Co.*, 25 I. C. C., 14, decided October 19th, 1912.

Government's counsel offer in evidence statement showing the railroad affiliations of coal companies alleged to be independent in defendants' evidence, page 867.

MR. REYNOLDS:—Defendants enter no objection to the statement now offered by the Government, but desire to call attention to the fact that it does not represent the present situation, as the reference to Defendants' Exhibit 13 closes with the calendar year 1911.

(The statement offered, marked **"Government's Exhibit 83, C. H. G.,"** is as follows):—

"STATEMENT SHOWING RAILROAD AFFILIATIONS OF COMPANIES ALLEGED TO BE 'INDEPENDENT' IN DEFENDANTS' EXHIBIT, DEFENDANTS' EVIDENCE, RECORD, PAGE 867:

	Name of Operator.	Tonnage in 1911 as given in Defendants' Exhibit.	Railroad affiliations and source of information.
1.	Alden Coal Co.....	274,358	Sold output to L. V. Coal Co. (Def. Ex. 13).
2.	A. Pardee & Co.....	541,253	Sold output to L. V. Coal Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 634).
3.	Alliance Coal Co.....	120,263	Stock owned by Lehigh & Wilkes-Barre Coal Co. and L. C. & N. Co. (Admitted in defendants' answers).
4.	Buck Run Coal Co.....	214,317	Sold output to P. & R. C. & I. Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 612). Leases lands from P. & R. C. & I. Co. under covenant to ship output over P. & R. Railroad (Gov't. Ev. p. 397). Still sells to Reading Coal Co. (Def. Ex. 13).
5.	Clear Spring Coal Co.....	40,652	Sold output to D. L. & W. R. Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 638). Still sells to D. L. & W. R. Co. (Def. Ex. 13).
6.	C. M. Dodson & Co.....	334,630	Leases lands from Lehigh & Wilkes-Barre Coal Co. under covenant to ship output over Central R. R. (Gov't. Ev. p. 363).
7.	Dolph Coal Co. Ltd.....	141,914	Sells output to Penna. Coal Co. (Def. Ex. 13). Formerly bound to do so by 65% contract. (Old Reading Rec. Vol. 2, 636).

1909

	Name of Operator.	Tonnage in 1911 as given in Defendants' Exhibit.	Railroad affiliations and source of information.
8.	Dodson Coal Co.	209,178	Leases its coal lands from Reading Coal Co. under covenant to ship output over Reading Railroad. (Gov't. Ev. p. 397).
9.	Elliott, McClure & Co.	245,858	Sells output to D. L. & W. R. Co. (Def. Ex. 13).
10.	Excelsior Coal Co.	250,697	Sells output to Reading Coal Co. (Def. Ex. 13). Leases its coal lands from Reading Coal Co. under covenant to ship over Reading Railroad (Gov't. Ev. p. 395) and from Fulton Coal Co. controlled by Reading Coal Co. (Gov't. Ev. p. 396).
11.	Enterprise Coal Co.	206,176	Sells output to Reading Coal Co. (Def. Ex. 13), Gov't. Ex. 63). Leases its lands of Reading Coal Co. and Fulton Coal Co. under covenant to ship output over Reading Railroad. (Gov't. Ev. pp. 395-396).
12.	Evans Colliery Co.	6,942	Sold output to Lehigh Valley Coal Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 634).
13.	Forty Fort Coal Co.	572,810	A subsidiary of the Temple Iron Co. Sold output to Lehigh Valley Coal Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 634).
14.	Green Ridge Coal Co.	110,180	Sold output to Hillside Coal & Iron Co., a subsidiary of the Erie R. Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 636).

	Name of Operator.	Tonnage in 1911 as given in Defendants' Exhibit.	Railroad affiliations and source of information.
15.	George F. Lee Coal Co.....	91,470	Sold output to D. L. & W. R. R. under 65% contract. (Old Reading Rec. Vol. 2, p. 638).
16.	G. B. Markle Co.....	1,121,164	Def. Ex. 13. Output sold by Lehigh Valley Coal Co. under exclusive sales agency contract. (Old Reading Rec. Vol. 3, p. 312; Vol. 5, p. 1101).
17.	Gorman & Campion.....	21,993	Leases lands from Reading Coal Co. under covenant to ship output over Reading Ry. (Gov't Ev. p. 395).
18.	Jermyn Coal Co.....	586,582	Sold output to N. Y. Sus. & Western Ry. Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 637). Still sells to N. Y. Sus. & Western Ry. Co. (Def. Ex. 13).
19.	John Davis Coal Co.....	30,377	Leases lands from Reading Coal Co. under covenant to ship output over Reading Ry. (Gov't. Ev. p. 395).
20.	Lehigh Coal & Navigation Co.	615,143	One of the defendants in this suit.
21.	Moosic Mountain Coal Co...	194,088	Sells its output to Scranton Coal Co. (Def. Ex. 13), all of whose stock is owned by the N. Y., Ontario & Western R. Co. (Old Reading Rec. Vol. 3, p. 200).
22.	Mt. Jessup Coal Co. Ltd.....	235,713	Sells its output to Scranton Coal Co. (Def. Ex. 13).
23.	Mt. Lookout Coal Co.....	309,922	Sells its output to Lehigh Valley Coal Co. (Def. Ex. 13).

	Name of Operator.	Tonnage in 1911 as given in Defendants' Exhibit.	Railroad affiliations and source of information.
24.	Moses Neyer	5,405	Leases lands from Lehigh C. & N. Co. with covenant to ship output over Central R. R. (Gov't. Ev. p. 258).
25.	Maryd Coal Co	214,711	Leases lands from Lehigh C. & N. Co. with covenant to ship output over Central R. R. (Gov't. Ev. p. 258).
26.	Mill Creek Coal Co	119,833	Sells output to Lehigh Valley Coal Co. (Def. Ex. 13).
27.	Mt Hope Coal Co	80,275	Leases lands from Reading Coal Co. under covenant to ship output over Reading Ry. (Gov't. Ev. p. 395).
28.	Nay Aug Coal Co	78,142	Sold output to Hillside Coal Co., a subsidiary of the Erie R. R. under 65% contract. (Old Reading Rec. Vol. 2, p. 636).
29.	North End Coal Co	32,696	Sold output to D. L. & W. R. Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 638).
30.	Price-Pancoast Coal Co	624,821	Sells output to Scranton Coal Co. (Def. Ex. 13).
31.	Peoples' Coal Co	115,469	Sold output to D. L. & W. R. Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 638). Still sells output to D. L. & W. R. Co. (Def. Ex. 13).
32.	Plymouth Coal Co	281,607	Sells output to D. L. & W. R. Co. (Def. Ex. 13).

	Name of Operator.	Tonnage in 1911 as given in Defendants' Exhibit.	Railroad affiliations and source of information.
33.	Parrish Coal Co.....	270,435	Leased lands from Lehigh & Wilkes-Barre Coal Co. with covenant to ship over Central R. R. (Gov't. Ev. p. 470). Bound by 65% contract with Lehigh & Wilkes-Barre Coal Co. (Old Reading Rec. Vol. 2, p. 629). Now owned by Lehigh & Wilkes-Barre Coal Co. (Gov't. Ev. p. 395).
34.	Pine Hill Coal Co.....	498,622	Leases lands from Reading Coal Co. under covenant to ship output over Reading Ry. (Gov't. Ev. p. 395). Sells output to Reading Coal Co. (Gov't. Ex. 63). Formerly bound to do so by 65% contract. (Old Reading Rec. Vol. 2, p. 612).
35.	Red Ash Coal Co.....	208,961	Leases lands from Lehigh & Wilkes-Barre Coal Co. under covenant to ship output over Central R. R. (Gov't. Ev. p. 360). Sold output to Lehigh & Wilkes-Barre Coal Co. under 65% contract. (Old Reading Rec. Vol. 2. p. 629).
36.	Raub Coal Co.....	128,772	Sold output to Lehigh Valley Coal Co. under 65% contract. (Old Reading Rec. Vol. 2, p. 634).
37.	Sterrick Creek Coal Co.....	530,907	One of the Temple Iron Co. subsidiaries. Decree in Old Reading Case. (Gov't. Ev. p. 7).

	Name of Operator.	Tonnage in 1911 as given in Defendants' Exhibit.	Railroad affiliations and source of information.
38.	St. Clair Coal Co.....	324,685	Leased lands from Reading Coal Co. under covenant to ship output over Reading Ry. (Gov't. Ev. p. 395). Sold output to Reading Coal Co. (Old Reading Rec. Vol. 2, p. 612). Still sells coal to Reading Coal Co. (Gov't Ev. p. 337; Def. Ex. 13).
39.	West End Coal Co.....	712,631	Leased Coal lands from Lehigh & Wilkes-Barre Coal Co. with covenant to ship output over Central Railroad. (Gov't. Ev. p. 363). Sold output to Lehigh & Wilkes-Barre Coal Co. until December, 1912. (Def. Ex. 13).
40.	Wolf Coal Co.....	58,234	Sells output to Lehigh Valley Coal Co. through Coxe Bros. & Co. Inc. (Ans. of Lehigh Valley Coal Co. to Question No. 57, I. C. C. Docket No. 4914).
41.	White & Co.....	21,949	Leases lands from Reading Coal Co. under covenant to ship output over Reading Ry. (Gov't. Ev. p. 395).
	Total.....	13,783,835	

Total number of coal companies listed as 'independent' in defendants' exhibit..... 116
Total tonnage in 1911..... 22,479,394"

Government's Counsel offer the following statement, furnished by Counsel for Lehigh and Wilkes-Barre Coal Company:

LEHIGH AND WILKES-BARRE COAL COMPANY.

STATEMENT SHOWING THE AVERAGE PRICE RECEIVED FOR COAL SOLD AT NEW YORK TIDE WATER FOR EACH SIZE AND FOR ALL SIZES FROM 1898 TO 1913.

YEAR.	LUMP AND STEAMER.	BROKEN.	EGG.	STOVE.	CHEST.	PEA.	BUCK. No. 1.	BUCK. No. 2.	BUCK. No. 3.	TOTAL.
1898	3.658	3.278	3.509	3.727	3.381	2.281	2.005	2.616	.....	3.332
1899	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1900	3.363	3.266	3.666	4.040	4.040	2.396	2.200	1.455	.....	3.527
1901	3.530	3.481	4.012	4.288	4.320	2.492	2.217	1.625	.....	3.775
1902 & 1903	3.939	3.983	4.552	4.720	4.600	2.726	2.200	1.902	.....	4.168
1904	.....	4.252	4.735	4.779	4.737	2.942	2.450	.....	.....	4.345
1905	4.987	4.214	4.734	4.757	4.769	2.751	2.449	.....	1.250	4.332
1906	4.800	4.198	4.833	4.846	4.866	2.776	2.450	1.795	.....	4.361
1907	.....	4.194	4.755	4.750	4.774	2.765	2.450	1.806	.....	4.369
1908	4.800	4.190	4.739	4.767	4.785	3.004	2.477	1.950	1.450	4.452
1909	4.800	4.198	4.745	4.754	4.789	3.201	2.450	.....	1.450	4.502
1910	.....	4.202	4.730	4.756	4.797	3.152	2.450	1.964	.....	4.539
1911	.....	4.201	4.708	4.724	4.850	3.070	2.512	1.950	.....	4.487
1912	.....	4.229	4.922	4.920	5.178	3.149	2.649	1.720	.....	4.585
1913	.....	4.441	5.040	5.032	5.309	3.451	2.700	2.200	1.694	4.801

NOTE.—Years 1898 to 1901, year ends December 31.
Balance years June 30.

Government's Counsel offer the following table from the same source:

LEHIGH AND WILKES-BARRE COAL COMPANY.

STATEMENT SHOWING THE AMOUNT OF EACH SIZE OF ANTHRACITE COAL SOLD AT NEW YORK TIDE WATER AND THE TOTAL OF ALL SIZES FROM 1898 TO 1913.

YEAR.	LUMP AND STEAMER.	BROKEN.	EGG.	STOVE.	CHEST.	PEA.	BUCK. No. 1.	BUCK. No. 2.	BUCK. No. 3.	TOTAL.
1898	3872	132947	177790	171500	126074	112558	8301	3926	.....	736968
1899	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1900	4862	242713	243248	279651	146896	155809	2926	4048	.....	1080153
1901	3071	265809	319771	372203	160130	211854	1527	1063	.....	1335428
1902 & 1903	4526	325848	363816	394437	325325	259064	386	601	.....	1674003
1904	.....	262273	380236	414742	235134	276163	4316	.....	.....	1572864
1905	194	268891	363555	416054	255688	242063	8834	1306	.....	1556585
1906	261	236750	320175	370723	235585	233510	20891	615	.....	1418510
1907	391	263317	401006	416516	292515	207091	18985	5734	.....	1605555
1908	121	240615	414518	452468	307974	164200	29871	1203	184	1611154
1909	244	199158	369099	367166	259314	98805	32630	.....	442	1326858
1910	.....	191895	356768	294460	251000	62987	20042	1138	.....	1178290
1911	.....	254527	329796	280981	236491	70734	16320	7890	.....	1196739
1912	.....	254823	372614	294474	243707	156338	22537	.....	2952	1347445
1913	.....	260795	488947	403824	296000	122109	14584	12403	13747	1612409

NOTE:—Years 1898 to 1901, Year December 31.
Balance Years June 30.

Government's Counsel offer the following table, from the same source:

LEHIGH AND WILKES-BARRE COAL COMPANY.

STATEMENT SHOWING THE AVERAGE PRICE RECEIVED AT MINES FOR EACH SIZE OF ANTHRACITE COAL AND FOR ALL SIZES TAKEN TOGETHER IN EACH YEAR FROM 1898 TO 1913.

YEAR.	LUMP AND STEAMER.	BROKEN.	EGG.	STOVE.	CHEST.	PEA.	BUCK. No. 1.	BUCK. No. 2.	BUCK. No. 3.	TOTAL.
1898										
1899										
1900										
1901	2.022	1.802	2.169	2.522	2.369	1.145	.779	.351		1.797
1902	2.053	1.983	2.49	2.763	2.694	1.295	.842	.436	.107	2.006
1903										
1904	2.784	2.656	3.291	3.29	3.265	1.702	1.325	2.768	.25	2.577
1905	2.677	2.784	3.221	3.283	3.273	1.638	1.262	.665	.248	2.525
1906	2.516	2.727	3.213	3.254	3.272	1.553	1.232	.689	.248	2.488
1907	2.50	2.717	3.302	3.333	3.344	1.555	1.236	.72	.248	2.531
1908	2.50	2.692	3.212	3.258	3.275	1.561	1.248	.715	.265	2.501
1909	2.694	2.699	3.216	3.268	3.29	1.719	1.272	.808	.369	2.573
1910	2.75	2.701	3.214	3.281	3.311	1.858	1.241	.756	.364	2.552
1911	2.75	2.703	3.196	3.269	3.288	1.859	1.249	.785	.327	2.552
1912	2.75	2.70	3.198	3.267	3.362	1.846	1.297	.832	.35	2.54
1913	2.775	2.718	3.335	3.392	3.558	1.85	1.455	.986	.462	2.726
	3.00	2.936	3.501	3.519	3.764	2.117	1.48	1.029	.524	2.816

NOTE:—Years 1898 to 1901, Year December 31.
Balance of years June 30.

Government's Counsel offer in evidence the following table, from the same source:

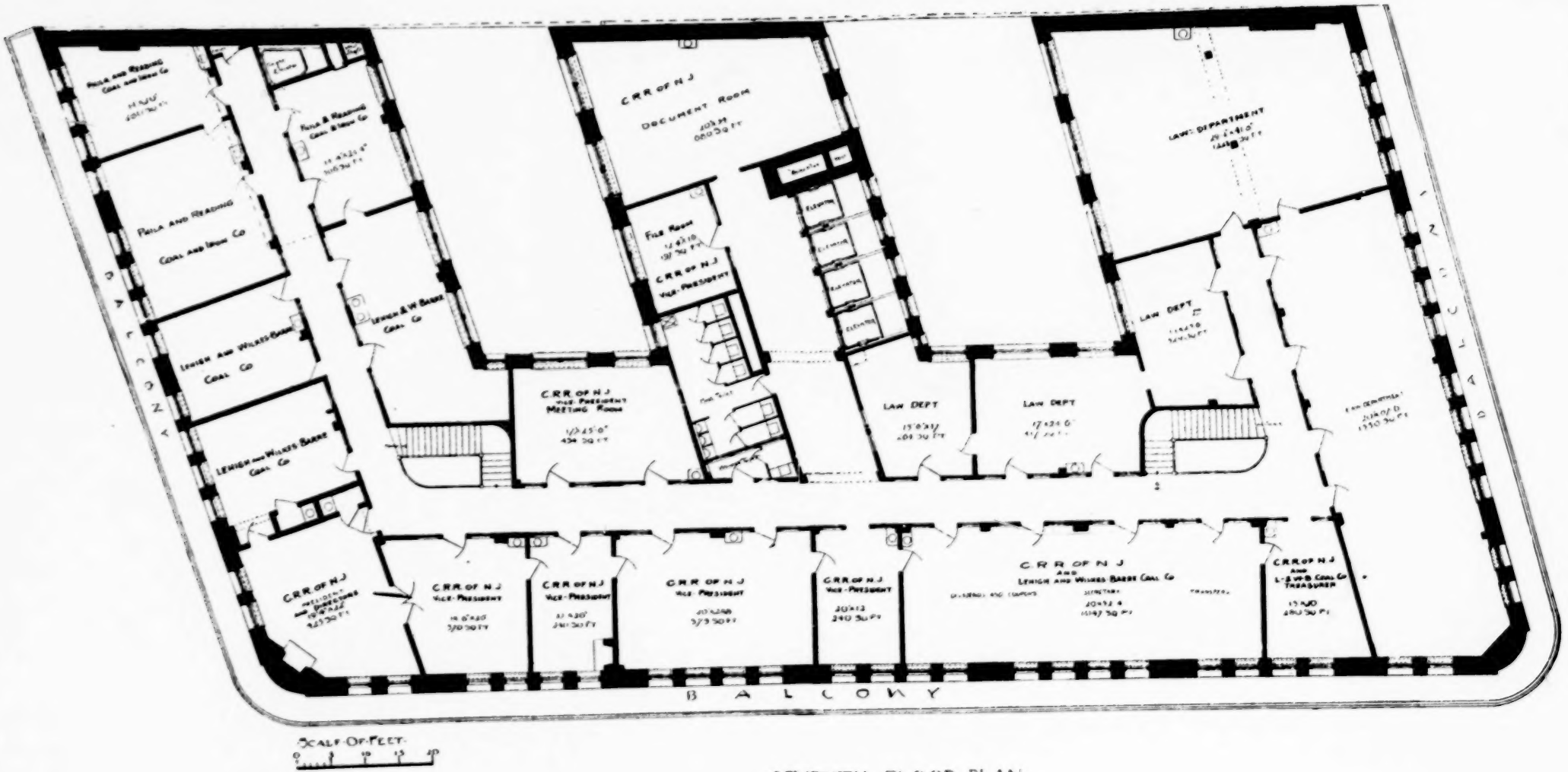
LEHIGH AND WILKES-BARRE COAL COMPANY.

STATEMENT SHOWING THE AMOUNT OF EACH SIZE OF ANTHRACITE COAL SOLD AT THE MINES AND THE TOTAL OF ALL SIZES FOR EACH YEAR FROM 1898 TO 1913.

YEAR.	LUMP AND STEAMER.	BROKEN.	EGG.	STOVE	CHEST.	PEA.	BUCK No. 1.	BUCK No. 2.	BUCK No. 3	TOTAL.
12/31—1898	124934	195780	116417	158334	[illegible]	292580	220731	43647	22469	22
" 1899	200369	240688	155566	203251	3[illegible]	368386	319721	44052	24099	1 [illegible]465
" 1900	195572	253748	168752	213524	35 225	383340	364650	88516	18704	2 [illegible]9031
" 1901	153860	319520	209738	283340	43[illegible]367	420402	461194	117965	12573	2412958
18 Mos. to 6/30, 1903	84529	448253	372038	463530	571638	501414	588123	147269	59280	3236084
6/30—1904	43356	382828	231542	410969	576227	462353	599128	154161	72513	2933077
" 1905	20644	306305	228260	428292	549081	397337	625215	153380	104030	2812544
" 1906	14144	350696	208928	390241	548809	415222	604986	125570	81439	2740035
" 1907	25062	322274	259366	402998	59[illegible]307	437784	618605	167334	164521	2991151
" 1908	28600	333248	225859	488389	66[illegible]430	464108	587253	139883	164444	3097214
" 1909	45328	298965	236660	450050	582076	466359	596047	119835	183828	2979148
" 1910	37391	303802	208157	501202	671692	465326	576202	117324	216912	3098008
" 1911	37117	346259	224494	595252	734836	477972	587873	154117	282803	3440719
" 1912	15710	312554	333250	595093	811689	510698	507555	111698	237337	3435584
" 1913	31814	374965	353656	614479	741838	474934	653876	141554	360333	3747449

NOTE.—Years 1898 to 1901, Year December 31.
Balance years June 30.

1911



SCALE OF FEET

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SEVENTH · FLOOR · PLAN

Government's counsel offer in evidence a statement, in the form of diagram, with explanatory matter, furnished by counsel for the defendants showing the location of the offices of the Central Railroad Company of New Jersey, the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company, at 143 Liberty Street, New York City, together with a statement as to the position held by the occupant of each office.

The statement referred to is as follows:—

Eleventh floor, occupied by various tenants.

Tenth floor, occupied by various tenants.

Ninth floor, occupied by various tenants.

Eighth floor, occupied by the Freight and Passenger Traffic Departments of The C. R. R. of N. J.

Seventh floor, (see diagram).

Sixth floor, occupied by Real Estate Department, The C. R. R. of N. J.—and various other tenants.

Fifth floor, occupied by General Superintendent, The C. R. R. of N. J.—and various other tenants.

Fourth floor, occupied by various tenants.

Third floor, occupied by Freight Claim Department, The C. R. R. of N. J.—and various other tenants.

Second floor, occupied by Chief Engineer, The C. R. R. of N. J., and various other tenants.

First floor, occupied by Chief Engineer, The C. R. R. of N. J., and various other tenants.

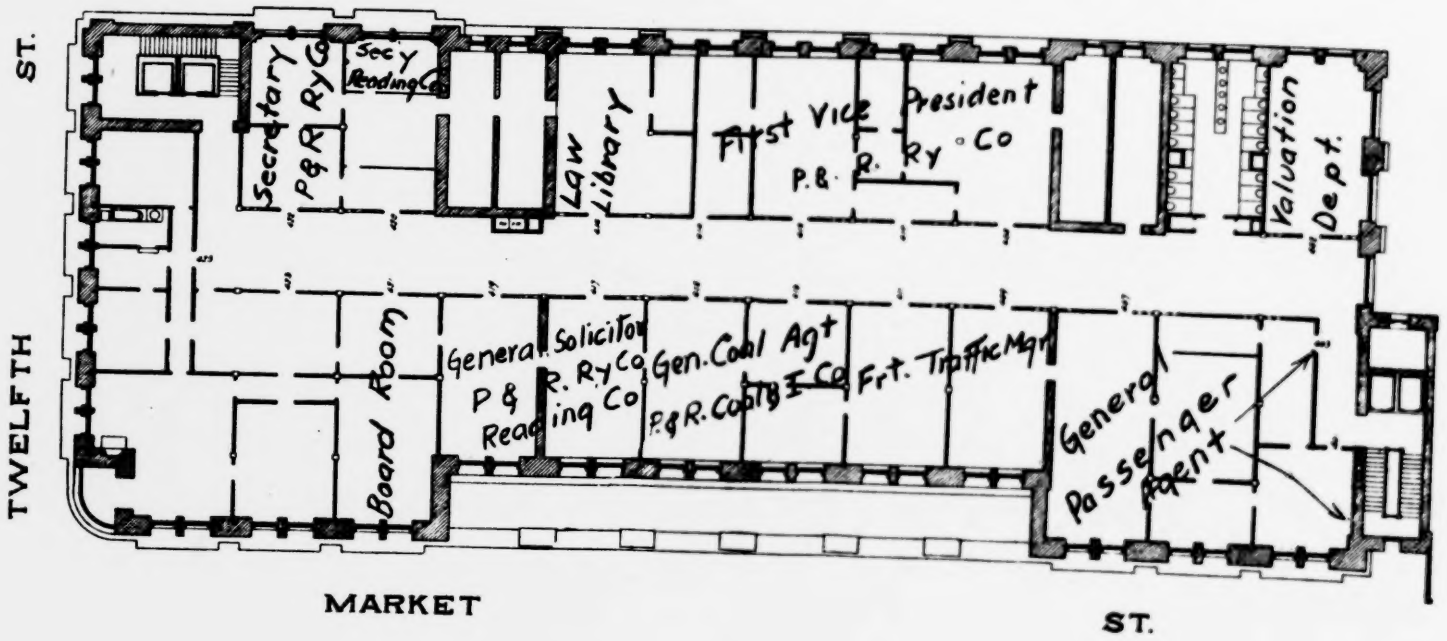
Ground floor, occupied by various tenants.

The diagram offered follows:—

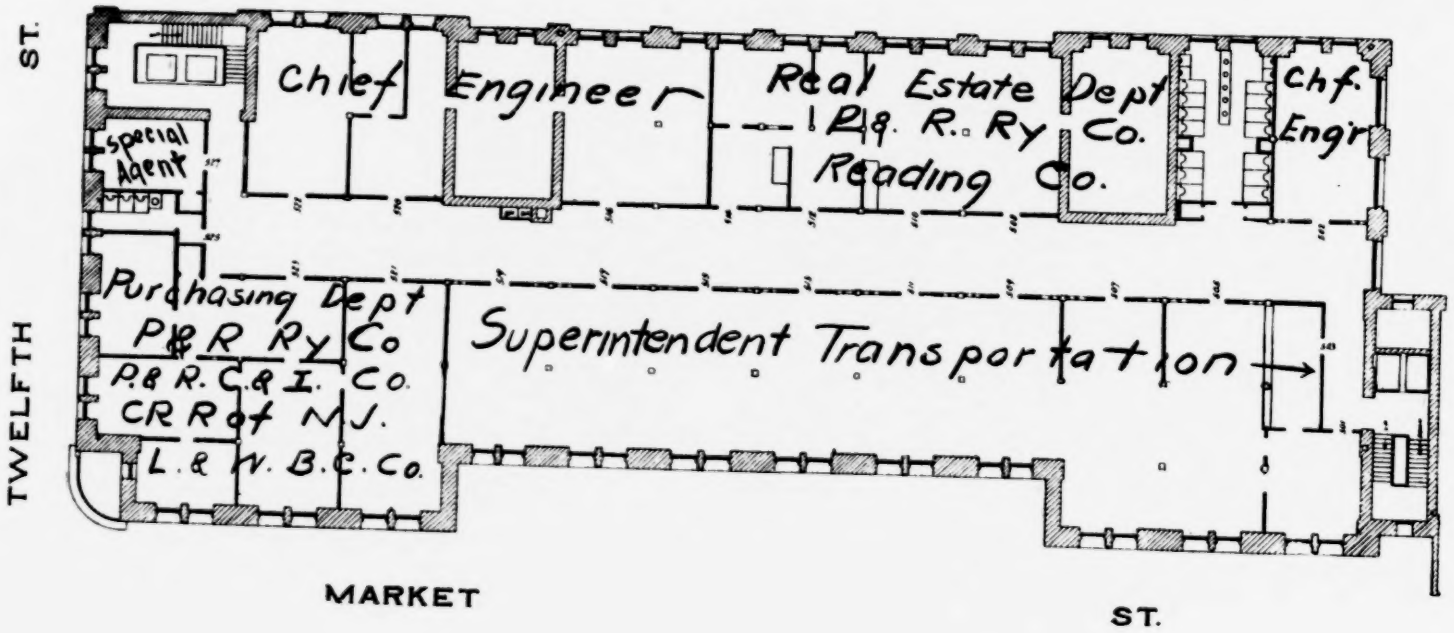
Government's counsel offer in evidence similar diagrams, furnished by the counsel for the defendants, of the offices at the Reading Terminal.

The diagrams offered follow:

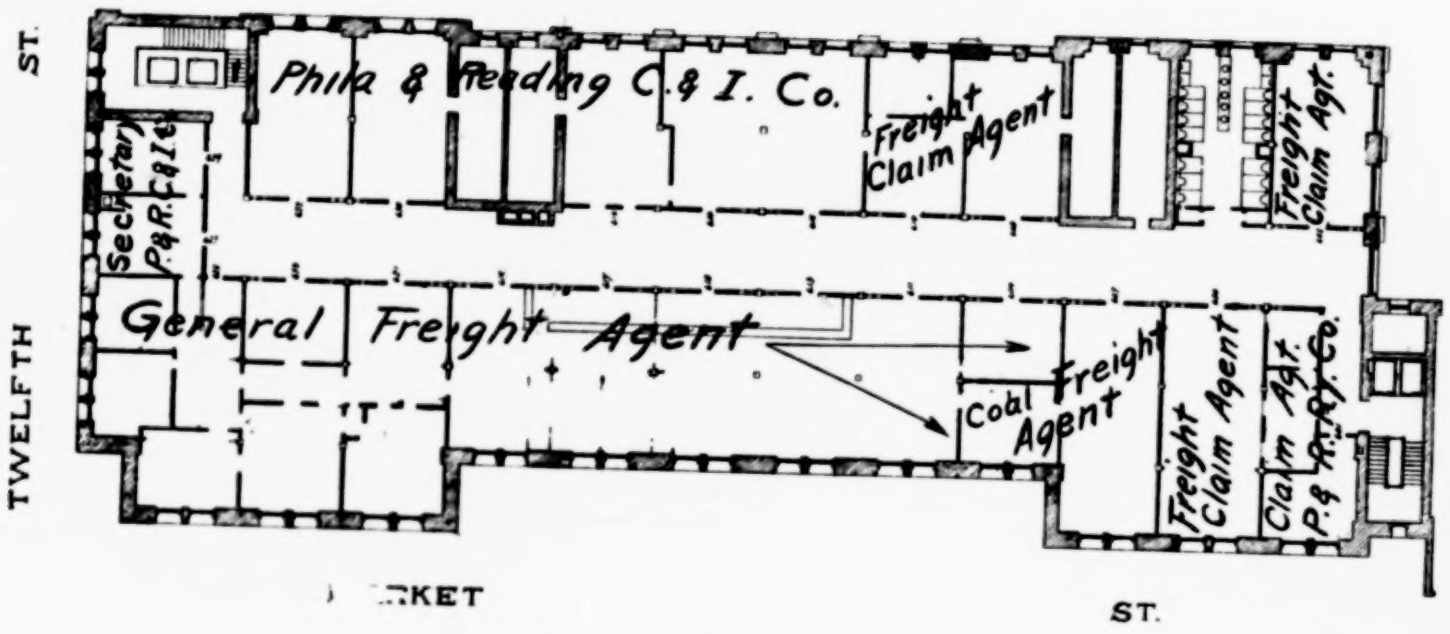
First Floor Plan



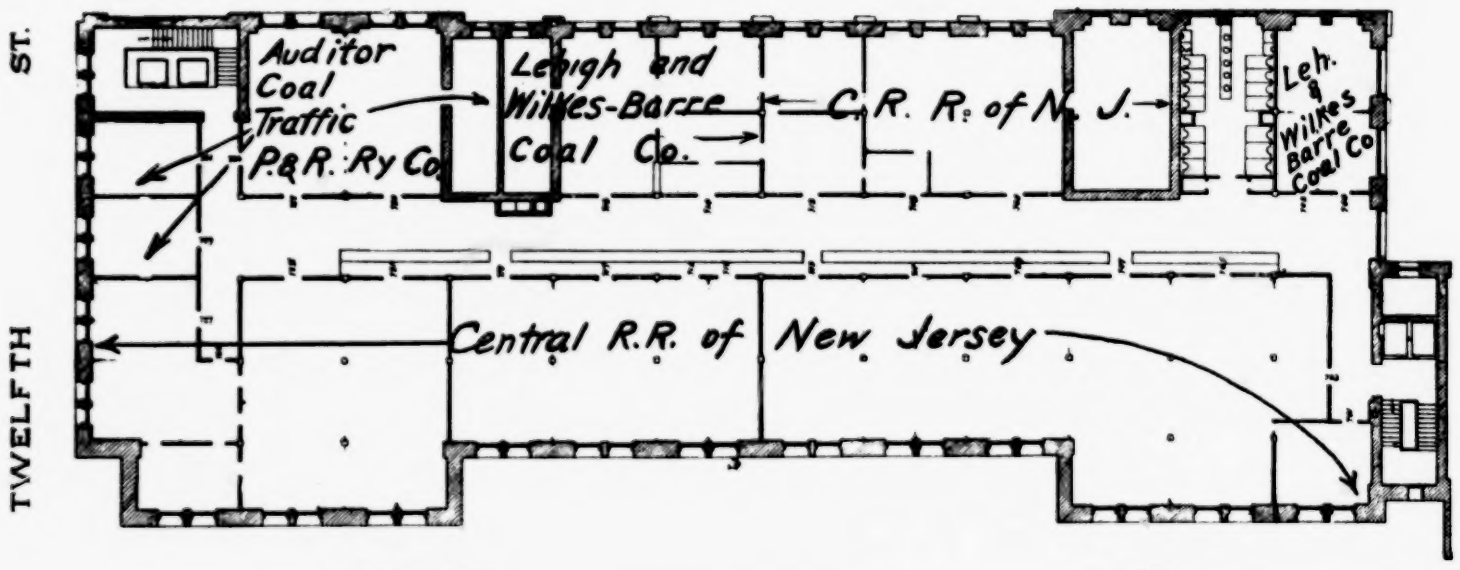
Fourth Floor Plan



Fifth Floor Plan



Sixth Floor Plan



Seventh Floor Plan.

Government's counsel offer in evidence testimony of John Woolverton, Chief Tonnage Clerk at the Port Richmond pier of the Philadelphia and Reading Railway Company, given in the Interstate Commerce Commission hearing in the Matter of Rates and Practices in the Transportation of Anthracite Coal, Docket 4914, including both the direct and cross examination, as follows:—

"**John Woolverton** was called as a witness, and having been duly sworn, testified as follows:

"*Direct examination.*

"EXAMINER SMITH:—Will you give your full name to the Reporter?

"MR. WOOLVERTON:—John Woolverton.

"EXAMINER SMITH:—What is your occupation?

"MR. WOOLVERTON:—I am Chief Tonnage Clerk at Port Richmond pier.

"EXAMINER SMITH:—Of what road?

"MR. WOOLVERTON:—The Philadelphia and Reading.

"MR. HICKEY:—I offer in evidence form 1151, Coal Report, Port Richmond, of the Philadelphia and Reading Coal and Iron Company, dated November 29th, 1912. Coal Report, Port Richmond, of the Philadelphia and Reading Coal and Iron Company, dated November 30th, 1912. Individual Car Reports, Philadelphia and Reading Railway Company, Port Richmond, dated November 29th, 1912. Individual Car Report, Philadelphia and Reading Railway, Port Richmond, dated November 30th, 1912. Form 4049, Telegraph Reports from Port Richmond, dated November 29th, 1912, Philadelphia and Reading Railway Company. Form 4049 of the Philadelphia and Reading Railway Company, Report by telegraph from Port Richmond, dated November 30th, 1912. All under one exhibit number. These reports were produced under subpoena by Mr. Hegeman.

"MR. HEEBNER:—These are reports from whom to whom?

"MR. HICKEY:—We understand they are reports prepared

in the office of the shipping agent of the Philadelphia and Reading Railway at Port Richmond. I desire to ask the witness to whom they are rendered, and the purpose of them.

"EXAMINER SMITH:—They may be received and marked.

(The documents referred to were offered and identified and received in evidence and thereupon marked "Commission's Exhibit No. 1, Witness Woolverton, received in evidence January 15, 1914" and are attached hereto.)

"MR. HICKEY:—Mr. Morgan will examine on this.

"MR. MORGAN:—In your capacity as chief tonnage clerk, what are your duties?

"MR. WOOLVERTON:—To handle tidewater anthracite and bituminous coal going over Port Richmond piers.

"MR. MORGAN:—Where is your office?

"MR. WOOLVERTON:—2821 Richmond Street.

"MR. MORGAN:—Is that at Port Richmond?

"MR. WOOLVERTON:—At Port Richmond, yes, sir.

"MR. MORGAN:—Are the demurrage records of the Philadelphia and Reading Railway compiled under your direction or by you?

"MR. WOOLVERTON:—Under my direction.

"MR. MORGAN:—You are employed by the Philadelphia and Reading Railway Company?

"MR. WOOLVERTON:—Philadelphia and Reading Railway Company.

"MR. MORGAN:—Some of the coal that finally reaches Port Richmond is set out at Wood Lane Yard, is it not?

"MR. WOOLVERTON:—I believe it is, yes, sir.

"MR. MORGAN:—Don't you know?

"MR. WOOLVERTON:—It is.

"MR. MORGAN:—Is there any demurrage assessed while such coal is at Woodlane?

"MR. WOOLVERTON:—There is not.

"MR. MORGAN:—Upon arrival at Woodlane Yard what is done with the waybills for that coal?—the waybills themselves?

"MR. WOOLVERTON:—The waybills?

"MR. MORGAN:—Yes.

"MR. WOOLVERTON:—The waybills are sent to Port Richmond. The yardmaster at Woodlane handles no waybills.

"MR. MORGAN:—Are the consignees of that coal notified upon the arrival of that coal at Woodlane?

"MR. WOOLVERTON:—They are.

"MR. MORGAN:—By what means?

"MR. WOOLVERTON:—By postal notification.

"MR. MORGAN:—Is the Philadelphia and Reading Coal and Iron Company notified in the same manner?

"MR. WOOLVERTON:—They are not.

"MR. MORGAN:—How do they receive notice of the arrival of their coal?

"MR. WOOLVERTON:—They have a representative come to Richmond each morning, and he gets his notification in abstract by means of this form 1151.

"MR. MORGAN:—On coal that has been set out at Woodlane, regardless of the length of time it might have been laying there on arrival at Port Richmond? If that coal is unloaded on the same day as it arrives, how many days' credit would you allow on such cars.

"MR. WOOLVERTON:—If it was a party working on the average time, they would get their seven days' credit.

"MR. MORGAN:—Regardless of the time it laid at Woodlane?

"MR. WOOLVERTON:—Yes, sir.

"MR. MORGAN:—I will ask you to look at form 1151 and tell us what that report consists of, to whom it is rendered. (Paper handed to witness).

"MR. WOOLVERTON:—In what way, what does it consist of?

"MR. MORGAN:—To whom is that report rendered?

"MR. WOOLVERTON:—Well, there are several copies of it made out, and the Coal and Iron Company get several, and several of them go to the Railway Company.

"MR. MORGAN:—What does that report cover, whose shipment?

"MR. WOOLVERTON:—Whose shipment does this cover?

"MR. MORGAN:—This particular one.

"MR. WOOLVERTON:—D. & L. Coal and Iron Company.

"MR. HICKEY:—On form 817, that is headed what?

"MR. WOOLVERTON:—Philadelphia and Reading Railway.

"MR. MORGAN:—What does it cover?

"MR. WOOLVERTON:—It covers bituminous coal standing at Port Richmond.

"MR. MORGAN:—Consigned to whom?

"MR. WOOLVERTON:—Consigned to individual consignees.

"MR. MORGAN:—Not to the Philadelphia and Reading Coal and Iron Company?

"MR. WOOLVERTON:—Not the Philadelphia and Reading Coal and Iron Company.

"MR. MORGAN:—How many copies of that are made?

"MR. WOOLVERTON:—There are four or five copies of that made.

"MR. MORGAN:—On November 29th, the date that that report was made out, who received copies of that report?

"MR. WOOLVERTON:—The General Coal Agent of the Coal and Iron Company, and our General Pier Foreman at Richmond, the Assistant Trainmaster, and an office copy, and one I retain.

"MR. MORGAN:—A copy goes to the general—what officer of the Coal and Iron Company?

"MR. WOOLVERTON:—General Coal Agent.

"MR. MORGAN:—None of these cars on there are consigned to the Philadelphia and Reading Coal and Iron Company?

"MR. WOOLVERTON:—None.

"MR. MORGAN:—But a copy of that report is turned over to the General Coal Agent of the Coal and Iron Company?

"MR. WOOLVERTON:—Yes, sir; a copy of this report was.

"MR. MORGAN:—On that date in question, or about that time, you state you gave a copy of that to the General Coal Agent of the Philadelphia and Reading Coal and Iron Company?

"MR. WOOLVERTON:—Yes, sir.

"MR. MORGAN:—Did he get it personally from you?

"MR. WOOLVERTON:—No; he did not get it personally.

"MR. MORGAN:—Who did?

"MR. WOOLVERTON:—Their representative got it.

"MR. MORGAN:—What was his name?

"MR. WOOLVERTON:—McDermott.

"MR. MORGAN:—Do you know his first name?

"MR. WOOLVERTON:—H. J. McDermott.

"MR. MORGAN:—And the General Coal Agent of the Coal and Iron Company is what?

"MR. WOOLVERTON:—R. J. Montgomery.

"MR. MORGAN:—That report shows the consignee?

"MR. WOOLVERTON:—Of the coal, yes, sir.

"MR. MORGAN:—The kind of coal?

"MR. WOOLVERTON:—Yes, sir.

"MR. MORGAN:—How long it had been there?

"MR. WOOLVERTON:—No, sir.

"MR. MORGAN:—Doesn't it? Or is that the number of cars. (Indicating.)

"MR. WOOLVERTON:—No, sir, that is the number of cars. Egg, 11 cars; chestnut, 1, &c.

"MR. MORGAN:—This individual car report shows the consignee of the coal ——

"MR. WOOLVERTON:—Shows the consignee and the cars standing, and shows what is en route.

"MR. MORGAN:—And the cars on hand. Now, on form 4049, is that a telegraphic car report sent to the Superintendent of Transportation?

"MR. WOOLVERTON:—Yes, sir.

"MR. MORGAN:—What does that show?

"MR. WOOLVERTON:—That shows the coal standing at Port Richmond for our individual anthracite shippers.

"MR. MORGAN:—Of the individual anthracite shippers.

"MR. WOOLVERTON:—Yes, sir.

"MR. MORGAN:—And the other report is the report of the bituminous shippers?

"MR. WOOLVERTON:—Yes, sir.

"MR. MORGAN:—Was a copy of the telegraphic report also furnished to Mr. Montgomery or his representative?

"MR. WOOLVERTON:—It was.

"MR. MORGAN:—That report shows the consignee and number of cars and the various sizes of each kind of coal on hand, does it not?

"MR. WOOLVERTON:—It does.

"MR. MORGAN:—The giving of this report to Mr. Montgomery or his representative was a daily occurrence, was it?

"MR. WOOLVERTON:—Yes.

"MR. MORGAN:—Done every day?

"MR. WOOLVERTON:—Yes.

"MR. MORGAN:—How long has that practice been in effect?

MR. WOOLVERTON:—I could not say. It was handed to me.

"MR. MORGAN:—How long ago was that?

"MR. WOOLVERTON:—Well, that was in 1910.

"MR. MORGAN:—And it has been done daily since 1910?

"MR. WOOLVERTON:—Yes.

"MR. MORGAN:—The representative of Mr. Montgomery, I believe, you stated his name was McDermott?

"MR. WOOLVERTON:—McDermott.

"MR. MORGAN:—Did he call at your office each morning for this report?

"MR. WOOLVERTON:—I would not say he called for this particular report, but he called there.

"MR. MORGAN:—And got it each morning?

"MR. WOOLVERTON:—Yes.

"MR. MORGAN:—That will be all from this witness.

"Cross examination.

"MR. HEEBNER:—You know, if not of your own knowledge, from general knowledge, of the situation at Port Richmond, that this was a custom that had been handed down for many years, hadn't it?

"MR. WOOLVERTON:—Yes, sir. I have been in that department myself ten years, since 1903, and it happened before then.

"MR. HEEBNER:—Do you know whether or not it originated at the time when the Philadelphia and Reading Rail-

road Company owned all the stock of the Philadelphia and Reading Coal and Iron Company?

"MR. WOOLVERTON:—I could not ——

"MR. HEEBNER:—And the officers of one were the officers of the other?

"MR. WOOLVERTON:—Yes, it did.

"MR. HEEBNER:—Do you know whether or not any complaint was ever made because a report to the Philadelphia and Reading Railway Company that set out all the coal at Port Richmond, whether consigned to the Coal and Iron Company or others, and embracing both, was handed to an officer of the Coal and Iron Company—was there ever any complaint made about that?

"MR. WOOLVERTON:—I never heard of one.

"MR. HEEBNER:—The practice has been discontinued, hasn't it?

"MR. WOOLVERTON:—Yes, sir.

"MR. HEEBNER:—In other words, now, when you render a statement to the Coal and Iron Company, on that statement is simply given the coal consigned to the Coal and Iron Company?

"MR. WOOLVERTON:—That is all.

"Re-direct examination.

"MR. MORGAN:—I might ask Mr. Woolverton, if you would be in a position to hear of any such complaints, would they be made to you, if any such complaints were made?

"MR. WOOLVERTON:—I should think they would.

"MR. MORGAN:—Mr. Woolverton, you stated, in answer to Mr. Heebner's question, that at the time the Philadelphia and Reading Railroad Company owned all the stock of the Philadelphia and Reading Coal and Iron Company, that a certain practice obtained. Do you know for a fact that the Philadelphia and Reading Railroad Company ever owned all the stock of the Iron Company?

"MR. WOOLVERTON:—I will tell you what I thought Mr. Heebner was getting at, when the same officers were connected both with the Coal and Iron Company and the Rail-

road Company. I don't know anything about their stock. That is what you meant, wasn't it, Mr. Heebner?

"MR. HEEBNER:—Yes, when those two properties were handled together.

"MR. MORGAN:—That will be all from Mr. Woolverton.

"EXAMINER SMITH:—You said the practice had been discontinued?

"MR. WOOLVERTON:—Yes.

"EXAMINER SMITH:—When did that occur?

"MR. WOOLVERTON:—Just recently.

"EXAMINER SMITH:—Very recently?

"MR. WOOLVERTON:—Well, several months ago.

"EXAMINER SMITH:—That is all.

"MR. HEEBNER:—It was discontinued as soon as attention was called to it, that it was not a proper practice?

"MR. WOOLVERTON:—Yes, sir, that is what caused it.

"EXAMINER SMITH:—Who called attention to it?

"MR. WOOLVERTON:—The gentleman isn't here now.

"EXAMINER SMITH:—An officer of the Government?

"MR. WOOLVERTON:—Mr. Burke.

"EXAMINER SMITH:—An employee of the Interstate Commerce Commission?

"MR. WOOLVERTON:—Mr. Burke, yes, sir.

"EXAMINER SMITH:—That is all.

"(Witness excused.)"

Counsel for the Government offer in evidence following **letter of May 2d, 1914, from Secretary of the Interstate Commerce Commission** to Mr. Gordon, in answer to certain queries there outlined, concerning a siding agreement offered by the defendants as the standard siding agreement of the Central Railroad Company of New Jersey, which siding agreement contains a paragraph binding the shipper to route his freight or coal over the Central Railroad of New Jersey:—

"DEAR SIR:—I have your letter of the 30th ultimo, in reference to form of agreement used by the Central Railroad Company of New Jersey covering construction of side tracks, and quoting a paragraph under which the shipper agrees to ship all freight or coal which the shipper has to

offer for shipment from or which is to be received at the siding or trestle over the line of the contracting railroad company.

"You ask to be advised, first, whether the Commission has ever approved this or substantially similar routing clause in siding agreements. I can find no record of any ruling of the Commission upon the question of the legality of such a contract provision, nor does it appear that the Central Railroad Company of New Jersey has filed with the Commission any contract containing the condition quoted in your letter.

"In reply to your second inquiry, the Commission has never construed that portion of section 1 of the Act to regulate commerce, which provides that an interstate railway shall construct, maintain and operate a switch connection with private side tracks, as applied to the routing clause which you quoted.

"There are enclosed herewith several decisions of the Commission in regard to side track construction which you may desire to examine.

"Respectfully,

"GEORGE B. McGINTY

"Secretary.

"Encs."

At 12.45 P. M. a recess was taken until 2 o'clock P. M.

Present.—The Examiner. Messrs. Coudert, Kingsbury and Gordon, for Government. Messrs. Reynolds and Heebner, for the defendants.

William G. Brown, recalled:—

By Mr. Gordon:

Q. Will you state once more your official capacity? A. Secretary of the Philadelphia and Reading Coal and Iron Company.

Q. You have introduced in evidence, have you not, at page 1711 of the stenographer's minutes (printed page 922) the table showing the cost per ton of coal? A. Yes.

Q. Will you please note the column headed "Cost per ton of coal sold by the Company." The figures there given are not, strictly speaking, the cost of production, are they? A. No, sir.

Q. But rather the cost per ton of all the operations of the company? A. That is the actual cost of the coal that is sold. You see, we do not always sell all the coal we mine.

Q. It is the cost per ton of the coal sold? A. Yes. We sell more than our product sometimes, and sometimes less than our product.

Q. Then that would be obtained, I suppose, in a general way, by dividing the total number of tons sold into the total expenses of operation? A. We would deduct from the total cost the value of the coal unsold. For instance, if we mined a thousand tons of coal, at a cost of $2, and sold 900 tons at a cost of $2.50 ,we would have a hundred tons left. That hundred tons we had left we would deduct from the cost of the coal we had mined, which would give the value of the coal we had sold.

Q. Subject to that exception, it would be obtained by dividing the total cost of operation by the total tons of coal sold? A. Yes, sir.

Q. I show you also page 195 of the Government's testimony, printed record, being the answer fifty-two of the Philadelphia and Reading Coal and Iron Company in I. C. C. docket 4914, being a statement of the operating revenue and expenses of the Philadelphia and Reading Coal and Iron Company for the years stated. A. Yes.

Q. Was that statement prepared under your authority? A. I presume it was. I would be the proper officer, but this is prepared almost exactly, I suppose, from the annual report This is our annual report, and the figures agree with the annual report.

Q. You would be familiar with the figures in the annual report? A. Yes.

Q. I wanted to see just what items entered into the cost of operation, as stated in this exhibit on page 195 of the Government's evidence. In ascertaining the figures given in your statement at page 1711 of the stenographer's min-

utes (printed page 922) under the heading "Cost per ton of coal sold," did you include in the total cost, which was divided by the total number of tons sold, the item given in answer to 52 headed "Mining coal and repairs," under expenses? A. Yes.

Q. What did those repairs refer to? A. Colliery equipment, and colliery breakers and tracks, &c.

Q. Matters of that sort? A. Yes.

Q. Did you also include in the cost of operation that large item, averaging over a million dollars a year, headed "Improvements to collieries?" A. Yes.

Q. In answer 52, it also appears, under expenses, that an average of about $2,000,000 a year was spent for anthracite coal purchased. Did that item also enter into the total cost of operation? A. Yes—mined by company?

Q. No, referring still to the heading "Cost per ton of coal sold." A. Yes.

Q. Did it enter in? A. Yes.

Q. That coal was purchased principally under the 65 per cent. basis, was it not? A. During those previous years, yes, under the 65 per cent. basis; up to 1912, all on the 65 per cent. basis. Of course, some of the coal we buy other than 65 per cent. contract, we buy at a fixed price.

Q. That 65 per cent. basis was reached, was it not, as the result of meetings between the independent operators and the large companies; that is a matter of common knowledge? A. Yes.

Q. And reached as a basis which would be fair to both sides? A. You mean the price?

Q. The 65 per cent. price, yes. A. The price was furnished by the Bureau of Anthracite Coal Statistics, if that is what you mean.

Q. No, not quite that. I mean the agreement to receive 65 per cent. was intended to be one fair to both sides? A. Yes.

By Mr. Reynolds:

Q. Do you know anything about the purchase contracts in the controller's office? A. Yes.

Q. You do? A. Yes.

Q. I mean, do you know about the negotiation of the purchase contracts? A. That was made in 1901, the arrangement for the 65 per cent. contract. That has been running ever since. It is the same basis now as it was then, up until 1913.

Q. Is that under your jurisdiction, the purchase of coal? A. Not the purchase of coal; the payment of the purchase price of coal.

Q. That is what I am getting at. Do you know anything about the way the terms are arrived at of the purchase? A. Nothing, no, except the printed contract.

Q. The contract is handed to you and you pay the price? A. Yes.

By Mr. Gordon:

Q. Presumably those purchases were made upon a basis which would give a reasonable profit to the independent operators?

Mr. Reynolds:—I object to the question being put in that way.

A. I know nothing about that at all.

Q. But that has been the basis upon which sales and purchases have been carried on for a long series of years? A. I could not say anything about the profit of independent operators.

Q. But that has been the basis, the sixty-five per cent. basis, upon which sales and purchases have been carried on for a long series of years? A. Yes.

Q. Referring again to the answer 52 on page 195 of the record (Stenographic Minutes, page 396), does the item "Royalty of leased collieries," averaging over $500,000 a year, also enter into the cost of operation in arriving at the cost per ton of coal sold? A. Yes.

Q. You are familiar with the persons to whom these royalties were paid? It would be part of your duty, the payment of these royalties? A. Yes.

Q. Is it or is it not a fact that much the larger part of the lands leased by the Philadelphia and Reading Coal and Iron Company, over 10,000 acres, in fact, are owned by companies such as the Fulton Coal Company, the Preston Coal

Company, and others named by you in your evidence, printed record, page 49 (Stenographic Minutes, page 91), as companies whose stock is nearly all owned by the Philadelphia and Reading Coal and Iron Company? A. Yes.

Q. Do these companies pay dividends? A. Two of them do.

Q. And have from time to time, for years past? A. Yes.

Q. Do these companies which pay dividends have any other substantial business beside receiving royalties from these lands? A. No other.

Q. Then the royalties which are paid to these companies for lands leased by the Philadelphia and Reading Coal and Iron Company, are returned to the Philadelphia and Reading Coal and Iron Company in the form of dividends? A. Yes.

Q. Referring again to answer 52, in I. C. C. Docket 4914, does the item under expenses entitled "Improvements and repairs to houses" also enter into the cost of production? A. No.

Q. You are positive of that? A. Yes, sir.

Q. In arriving at the cost per ton of coal sold, did you also add the very large item in answer 52, over a million dollars a year, headed "All other expenses?" A. I could not say whether we added all of that or not. We added whatever portion was chargeable to the cost.

What constitutes all other expenses, as you use it in that connection? A. Contingent expenses, payment of salaries, legal expenses ——

Q. The fixed charges of the company? A. What do you mean by fixed charges? Interest?

Q. Does interest enter in? A. No.

Q. The salaries of your officials? A. Yes.

Q. Wages to employes? A. Yes.

Q. What else? A. I cannot remember the other items in there exactly. There is quite a number of items, small items.

Q. It is a very substantial item, over a million dollars? A. Yes; wages and salaries of employes, and of a certain portion of the Mining Department.

Q. Do not wages and salaries come in the first item under expenses, "Mining coal?" A. Yes, all the salaries of the Operating Department, but we have quite a force at the office. We have the engineer.

Q. Then the salaries under that item "All other expenses," would include only your office force, strictly office force? A. Office force and our selling agencies, and some of our higher officials of the Mining Department. I could tell exactly what those items are, but I could not state them now from memory.

Q. I see from answer 52 that the Philadelphia and Reading Coal and Iron Company annually purchases and sells about a million dollars' worth of bituminous coal? A. Yes.

Q. Is that coal included in your statement on page 1711 (printed page 922)? A. It is not. I would state that that coal is principally sold in the West, in our depots and yards.

Q. Were the fixed charges of the Philadelphia and Reading Coal and Iron Company—that is, the general expenses, cost of selling and rent of selling offices, and that sort of thing—apportioned between your anthracite and your bituminous business, in arriving at the figure "Cost per ton of coal sold?" A. No, sir.

Q. They were all charged to anthracite? A. All our expenses were charged to anthracite. As I say, the bituminous coal is sold West almost entirely, at our depots and yards there, and it is kept entirely distinct and separate from the anthracite business.

Q. Your general expenses, which apply to your whole business, your office expense, your selling agencies, the cost of carrying on that portion of your business, is not apportioned between your bituminous and your anthracite coal in such a manner that the anthracite operations, as given in your statement on page 1711 (printed page 922) bear only their proportionate share of these general expenses? A. No, they are not included there.

Q. What are not included there? A. The proportion.

Q. It is not separated? A. It is not separated. It is charged entirely to bituminous. The bituminous is bought

entirely and sold entirely in the West, and all the expenses connected with bituminous—there is no general office expense chargeable to bituminous, because our bituminous is all sold at one point, in the West.

Q. But your company does a million dollars' worth of bituminous business a year? A. Yes, and this table of the cost of anthracite does not include any of the proportion of bituminous.

Q. Any of the expenses directly connected with the bituminous business? A. No, it does not include any.

Q. At the same time, from your statement of your general expenses, nothing is deducted as the proportion properly assignable to your bituminous business? A. If you look at this page 52, the coal sales of bituminous are given separately, the receipts of bituminous, and all the expenses in connection with the bituminous are deducted from those receipts. That would give the profit or loss on bituminous coal, which is included principally in the "coal purchased, anthracite."

Q. I am not sure that we meet in our point of view exactly. Let me state it once more. Take this situation here: you pay your president a certain salary? A. Yes.

Q. That is properly included, I suppose, in the general item "All other expenses?" A. Yes.

Q. Now that general item "All other expenses," is included in the total costs of operation, which are divided by the total number of tons of anthracite coal sold? A. Yes.

Q. And from that salary to the president, which is given as a part of the costs of operation of your anthracite business, is there or is there not any deduction made for that part of his duties which pertain to the one million odd dollars of bituminous business? A. No.

Q. In your exhibit at page 1711 (printed page 922), and also in your other exhibit at page 1713 (printed page 924), where you refer to tonnage, do you give your tonnage in gross tons or net tons? A. Gross tons, 2240 pounds.

Q. I show you an exhibit put in by the Government, pages 396-7 of the printed record (Stenographic Notes,

page 795), relative to the production of coal from lands leased by the Philadelphia and Reading Coal and Iron Company to independent operators. Was this statement prepared under your direction? A. Yes, sir.

Q. Referring to the last heading on page 307, "From lands leased to the Philadelphia and Reading Coal and Iron Company," that represents, does it not, lands which are held under lease by the Philadelphia and Reading Coal and Iron Company, and by it subleased to independent operators? A. Yes.

Cross examination.

By Mr. Reynolds:

Q. I notice that you have your cost of coal per ton in the exhibit on page 1711 (printed page 922), divided into two columns, one column headed "Mined by the Company" and the other "Mined and purchased." Is the cost per ton at any place separated between the coal mined by the company and the coal purchased? A. We show the cost separately of the coal purchased, and also separately the cost of the coal mined. The mined and purchased includes both the coal mined and the cost of the coal purchased.

Q. What others than the Preston Coal Company and the companies whose stock is owned by the Philadelphia and Reading Coal and Iron Company, do you lease on a royalty basis? A. We lease lands from the Girard Estate, and lease lands from the Sheafer Estate. I think those are the principal ones; the City of Philadelphia, the Girard Estate and some from the estate of P. W. Sheafer.

Q. What is the extent of the Girard Estate lands? A. In acreage?

Q. Yes. A. I could not tell, nor could I tell of the Sheafer Estate. Our operating department could specify that.

Q. Is it considerable? A. Considerable.

Q. What are your royalty payments to the Girard Estate by the month, say? Have you any idea? A. About $20,000 a month.

Q. $240,000 a year? A. Yes.

Q. That is your best recollection? A. Yes.

Q. And to the Sheafer Estate? A. To the Sheafer Estate from $30,000 to $35,000 a month.

Q. That would be roughly $400,000 a year? A. Yes, sir.

Re-direct examination.

By Mr. Gordon:

Q. You said that your royalties were $20,000 a month to the Girard Estate? A. About.

Q. And $30,000 to $35,000 a month to the Sheafer Estate? A. Yes.

Q. Those royalties are dependent upon the amount of coal mined, are they not? A. Yes.

Q. So that in the the Summer months, when the collieries are not working full time, the royalties would be smaller? A. No doubt the royalties would be smaller, yes.

Q. Considerably smaller? A. Considerably smaller.

Q. So that it would not be a proper estimate of the total royalty paid to multiply the amount of royalty paid during the Winter months by twelve? A. No.

Q. Referring to the answer on page 195 of the printed record (Stenographic Minutes page 396), there is an item "Interest and dividends," amounting to a very large sum. Do the dividends which are referred to there come from the stocks held in the subsidiary coal companies to which I have referred? A. Part of that item of interest and dividends receipts are dividends received from the Locust Gap and Fulton Coal Company.

Q. Do you receive dividends from any other companies except these two companies? A. None of the other subsidiary companies.

Q. Their part is a very considerable part of the item "Interest and dividends?" A. It is a fair proportion of the amount. I could not remember exactly the amount of dividends without referring to the books.

Q. Do these companies to which you referred have any accumulated surplus or funds in their possession, which

are not turned over to the Philadelphia and Reading Coal and Iron Company in the form of dividends? A. Very little.

Re-cross examination.

By Mr. Reynolds:

Q. Take the Sheafer Estate, to which, in answer to my mental arithmetic, you said you paid royalties of about $400,000 a year. Just giving us your best recollection—of course, I know it is difficult without your books—how much would you say ought to be taken off of that to meet with Mr. Gordon's very proper suggestion about the slack mining in the Summer? What would it reduce the royalties to, do you think? A. For the year?

Q. Yes. A. I think we pay them from $350,000 to $400,000 a year.

Q. To be fair, could you say from recollection that you paid them at least $350,000 a year? A. That is what I would say from recollection, yes.

Q. And to the Girard Estate, where mere multiplication would make $240,000, what would you say at least you paid per annum to the Girard Estate for royalties? A. I would say $125,000.

Q. At least? A. At least.

Q. And the maximum? A. The maximum would probably be $200,000. Frequently in these collieries the breakers get out of order, and sometimes they are stopped a month or two during a year, odd years, and you can hardly estimate the amount paid yearly.

Counsel for Government requested that Mr. Brown furnish the Examiner with a statement showing, for the years 1907 to 1912, inclusive, the royalties paid to owners of lands leased to the Philadelphia and Reading Coal and Iron Company, dividing them into two classes: Class 1. those companies whose stocks are owned by the Philadelphia and Reading Coal and Iron Company, and Class 2, all other leased lands.

Such a statement was subsequently furnished to the Examiner, as follows:—

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

STATEMENT OF AMOUNTS PAID SUNDRY PARTIES FOR ROYALTY ON COAL MINED, FOR THE FISCAL YEARS ENDED JUNE 30, 1907 TO 1912, BOTH INCLUSIVE.

STATEMENT OF AMOUNTS PAID SUNDRY PARTIES FOR ROYALTY ON COAL MINED, FOR THE FISCAL YEARS ENDED JUNE 30, 1907 TO 1912, BOTH INCLUSIVE.

TO WHOM PAID.	1907	1908	1909	1910	1911	1912
AUXILIARY COAL COMPANIES.						
Fulton Coal Co.	$2,308.93	$1,976.98	$3,130.03	$3,573.42	$2,923.57	$1,782.54
Locust Gap Improvement Co.	17,376.13	30,286.41	42,004.63	36,066.78	59,652.18	36,219.41
Tremont Coal Co.	8,464.78	9,693.40	2,036.99			
Preston Coal & Improvement Co.	51,281.05	51,408.61	37,365.37	26,732.12	15,623.51	19,091.38
Delaware Coal Co.	124.59					
Total Auxiliary Companies.	$79,555.48	$93,365.40	$84,537.02	$66,372.32	$78,199.26	$57,093.33
OTHER PARTIES.						
City of Philadelphia	$192,574.25	$171,554.02	$161,877.09	$145,460.52	$112,306.07	$104,189.70
Executors Estate of P. W. Sheafer	284,821.70	288,041.80	246,770.13	252,985.59	208,124.01	201,472.24
Girard Trust Co.	45,862.67	36,531.93	30,137.85	30,312.36	44,086.42	36,375.68
Administrators Estate of H. Bellas, Deceased	14,117.30	13,482.38	13,860.99	13,555.96	12,836.19	7,162.54
Cumberland Dugan *et al*	19,208.52	18,003.82	11,289.36	9,939.54	8,289.75	7,919.50
D. S. Althouse	6,594.95	9,792.94	11,705.31	8,226.16	9,452.51	9,553.83
Lehigh Valley Coal Co.	32,296.18	32,332.22	29,712.89	30,457.75	27,739.06	27,071.39
Alex. Klinger Heirs				300.00	1,200.00	1,200.00
Mrs. Emily Adams	1,072.54	2,247.19	1,303.70	1,381.27	1,314.45	389.21
Susquehanna Coal Co.	48.11	1,589.78	2,897.82	4,232.57	7,087.27	5,327.46
H. B. Coxe, Agent	879.57	637.55	89.50		51.75	14.28
F. B. Bannan, Agent	112.37					
Locust Mountain C. & I. Co.		143.45				
Lytle Coal Co.						753.73
Total of Other Parties	$597,588.16	$574,357.08	$509,644.64	$496,851.72	$432,487.48	$401,429.56
Grand Total	$677,143.64	$667,722.48	$594,181.66	$563,224.04	$510,686.74	$458,522.89

Philadelphia, May 7, 1914.

Government's Counsel offer in evidence the following statement:

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

STATEMENT SHOWING THE AVERAGE PRICE RECEIVED AT MINES FOR EACH SIZE OF ANTHRACITE COAL AND FOR ALL SIZES TAKEN TOGETHER IN EACH YEAR FROM 1898 TO 1913, BOTH INCLUSIVE.

YEAR	LUMP	STMR.	BRO.	EGG	STOVE	CHEST.	PEA	BUCK.	RICE	BARLEY	AVERAGE
1898	2.19.5	1.83.3	1.96.7	2.29.1	2.45.5	2.23.3	1.25.9	.70.3	.26.8	.....	1.77.3
1899	2.25.7	1.94.7	1.92.7	2.26.4	2.51.9	2.49.7	1.21.1	.69.5	.30.8	.....	1.84.1
1900	2.26	2.05.2	2.03.2	2.39.2	2.70.7	2.69.6	1.41.6	.83.8	.38	.....	1.93.7
1901	2.41.9	2.06.1	2.23.8	2.75.2	3.05.7	3.03.6	1.63.2	1.00.8	.43.1	.....	2.20.7
1902	2.63.4	2.24	2.57.6	3.09.2	3.22.2	3.25.8	1.74.3	1.15.6	.45.6	.....	2.32.3
1903	2.03.2	2.55.2	2.97.7	3.46.2	3.54.7	3.54.9	1.95.3	1.32.8	.57.7	.....	2.63.4
1904	2.79.5	2.33.3	2.87.5	3.36.6	3.50.9	3.51.9	1.67.8	1.12.4	.47.6	.....	2.53.4
1905	2.74.5	2.33.3	2.86.6	3.35.4	3.48	3.49.8	1.56.5	1.05.6	.45.2	.....	2.40.8
1906	2.96.7	2.34.3	2.87.2	3.40.3	3.54.2	3.55	1.55.4	1.04.1	.43.5	.....	2.32.8
1907	3.11.8	2.52.7	2.85.4	3.35	3.47.1	3.49.6	1.71.8	1.11.6	.49.9	.....	2.35.6
1908	3.24.6	2.55.9	2.81.1	3.33.1	3.46.8	3.48.7	1.87.8	1.25.8	.56.7	.....	2.41.o
1909	3.33.3	2.53.9	2.78.7	3.29.3	3.47.1	3.48.2	1.88.7	1.27.9	.56.7	.28.9	2.41.8
1910	3.27.3	2.54.2	2.77.1	3.28.4	3.46.8	3.49	1.87	1.18.3	.56.7	.26.8	2.41.3
1911	3.03.7	2.63.3	2.74.4	3.26.7	3.43.3	3.65.2	1.87.3	1.11.4	.56.6	.34	2.38.9
1912	3.71.3	2.76	2.93.5	3.56.4	3.73.9	3.96.3	2.11.7	1.28.4	.65.4	.39.8	2.70.3
1913	3.73.8	2.99.1	2.97.8	3.42.4	3.68.9	3.89	2.35.2	1.27	.70.6	.41.2	2.69.2

Philadelphia, May 2nd., 1914

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Government's Counsel offer in evidence the following statement:

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

STATEMENT SHOWING AMOUNT OF EACH SIZE OF ANTHRACITE COAL SOLD AT NEW YORK TIDEWATER DURING EACH YEAR 1898 TO 1913, BOTH INCLUSIVE, AND THE TOTAL FOR EACH YEAR.

YEAR.	STEAMBOAT.	BROKEN.	EGG.	STOVE.	CHESTNUT.	PEA.	BUCKWHEAT.	RICE.	BARLEY.	SCREENINGS.	TOTAL.
	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.
1898	379.14	250,735.17	103,471.04	345,334.06	263,113.08	20,158.17	37,111.13	39,615.00	.....	13,825.00	1,073,744.19
1899	333.13	272,084.17	150,752.06	374,323.06	319,602.02	49,745.18	56,009.17	33,680.12	.....	16,506.04	1,273,038.15
1900	50.10	113,234.00	128,075.11	265,433.18	218,181.05	59,756.04	48,193.02	66,702.00	.....	11,670.04	911,296.14
1901	180.00	80,374.03	135,567.09	357,145.18	316,566.00	48,058.09	25,087.09	39,570.10	.....	13,151.10	1,015,701.08
1902	109.00	48,366.10	66,236.00	159,827.00	142,177.00	16,163.00	7,228.06	20,757.01	.....	6,569.00	467,432.17
1903	150.00	110,271.00	121,927.00	322,622.00	265,749.00	32,493.00	44,920.15	28,427.05	.....	9,652.19	936,212.19
1904	.....	126,836.00	132,987.17	383,147.00	347,132.10	169,887.10	172,464.00	107,988.10	.....	10,139.12	1,450,582.19
1905	25.00	163,446.00	156,108.00	392,716.00	310,536.00	137,723.10	127,570.00	172,198.10	.....	10,725.00	1,471,048.00
1906	.....	174,051.06	113,386.00	306,305.00	235,941.00	127,545.10	99,019.00	191,612.10	.....	8,537.00	1,256,397.06
1907	.....	201,850.17	139,987.19	359,653.00	331,180.10	308,419.10	157,986.10	251,719.00	.....	10,445.00	1,761,242.06
1908	.....	163,433.00	121,739.01	296,055.00	254,651.00	164,056.10	69,318.00	238,600.10	.....	8,768.00	1,316,621.01
1909	.....	179,099.00	115,465.00	273,612.00	257,449.00	156,099.00	69,179.00	227,325.00	11,525.00	7,526.00	1,297,279.00
1910	.....	156,010.00	93,592.00	280,142.00	216,666.00	134,829.00	79,856.10	208,409.00	67,044.00	6,753.10	1,243,302.00
1911	87.00	153,646.00	91,339.00	260,422.00	227,978.00	133,372.00	80,754.00	226,203.00	106,853.00	8,337.00	1,288,991.00
1912	86.00	162,770.00	171,205.00	312,075.00	317,727.00	140,036.00	288,919.00	173,918.00	40,875.00	9,332.00	1,616,943.00
1913	91.00	158,900.00	119,463.00	271,619.00	218,855.00	90,692.00	78,014.17	58,355.00	11,232.00	7,838.00	1,015,059.17

Philadelphia, May 4th, 1914.

Government's Counsel offer in evidence the following statement:

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

STATEMENT SHOWING THE AMOUNT OF EACH SIZE OF ANTHRACITE COAL SOLD AT THE MINES DURING EACH YEAR FOR THE YEARS 1898 TO 1913, BOTH INCLUSIVE, AND THE TOTAL FOR EACH YEAR.

	LUMP.	STEAMBOAT.	BROKEN.	EGG.	STOVE.	CHESTNUT.	PEA.	BUCKWHEAT.	RICE.	BARLEY.	TOTAL.
	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.
1898	32,020.06	283,350.00	245,670.07	254,540.02	464,117.01	700,399.04	1,011,074.01	1,129,449.00	206,067.16	.....	4,326,687.17
1899	34,419.13	457,761.15	334,493.05	289,458.12	521,760.12	808,973.02	1,143,597.12	1,383,539.18	204,364.17	.....	5,178,369.06
1900	31,435.12	445,538.08	389,804.03	360,165.08	473,997.04	771,409.01	1,080,372.12	1,283,977.06	234,290.15	.....	5,070,990.09
1901	30,351.13	527,039.10	439,144.01	420,708.19	521,733.17	917,219.12	1,135,003.05	1,468,577.03	306,547.10	.....	5,766,325.10
1902	20,103.19	384,482.00	230,237.05	307,541.02	452,374.04	591,732.19	741,116.15	805,074.06	333,794.03	.....	3,866,456.13
1903	26,164.13	716,214.15	413,606.13	445,765.07	678,110.10	890,079.17	1,163,758.05	1,477,597.14	443,077.06	.....	6,254,375.00
1904	21,301.14	493,261.13	337,210.11	458,025.16	691,293.11	1,011,128.13	1,247,933.10	1,395,542.02	417,939.04	.....	6,073,636.14
1905	21,766.09	643,588.09	338,265.15	455,413.12	734,758.08	1,035,522.12	1,357,063.09	1,783,978.07	464,798.12	.....	6,835,155.13
1906	12,394.11	564,225.08	388,792.09	464,874.02	643,801.01	858,646.03	1,402,240.08	1,795,246.04	551,014.19	.....	6,681,235.05
1907	10,505.12	518,219.13	308,635.18	468,754.05	747,561.13	1,098,084.18	1,623,035.10	2,184,921.17	591,041.06	.....	7,550,760.12
1908	7,012.04	203,912.11	181,039.05	435,402.06	673,876.11	971,508.11	1,216,115.11	1,791,127.12	627,318.00	.....	6,107,312.11
1909	5,915.18	306,557.14	195,528.17	448,691.02	688,960.00	932,446.19	1,111,044.03	1,547,062.03	731,237.09	16,901.17	5,984,346.02
1910	5,042.05	327,879.00	218,008.11	631,124.15	758,237.13	982,964.05	1,136,208.10	1,594,981.05	667,962.18	41,682.18	6,364,092.00
1911	5,857.06	184,280.19	225,684.12	475,841.12	783,873.15	1,008,450.06	1,221,223.10	1,767,059.13	694,642.19	38,284.08	6,405,199.00
1912	1,957.05	154,364.09	325,086.10	686,986.04	853,697.11	1,084,050.10	1,140,848.14	1,840,787.15	617,161.05	52,179.15	6,757,119.18
1913	1,906.01	154,206.05	308,094.18	475,226.14	701,685.14	896,009.09	821,358.05	1,738,561.12	600,810.10	79,465.10	5,777,324.18

Philadelphia, May 2nd, 1914.

Government's Counsel offer in evidence the following statement:

THE PHILADELPHIA AND READING COAL AND

HIGH AND LOW SELLING PRICES F. O. B. MINES AND TIDEWATER (NEW YORK) FOR ALL SIZES OF ANT

YEAR	HIGH AND LOW SELLING PRICES F. O. B. MINES.																		
	LUMP		STEAMER		BROKEN		EGG		STOVE		CHESTNUT		PEA		BUCKWHEAT		RICE		
	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	Hi
November, 1880.....					Price	recor	ds not	kept p	reviou	s to 18	90.								
November, 1890.....	2.40	2.05	2.40	2.05	2.45	2.28	2.65	2.56	2.75	2.65	2.80	2.63	1.25	.80	.75	.50	.30	.25	
November, 1895.....	2.50	2.05	2.50	2.05	2.25	1.93	2.65	1.73	2.75	1.81	2.50	1.69	1.30	.85	.85	.65	.32	.25	
November, 1896.....	2.50	2.05	2.50	2.05	2.50	1.98	2.90	2.34	3.00	2.43	2.80	2.30	1.30	.85	.85	.65	.30	.25	
November, 1897.....	2.50	2.05	2.50	2.05	2.50	1.94	2.90	2.30	3.00	2.44	2.80	2.29	1.30	.85	.85	.65	30	.25	
November, 1898.....	2.50	2.05	2.50	2.05	2.50	1.92	2.90	2.08	3.00	2.20	2.80	2.07	1.50	.85	.85	.65	.30	.25	
November, 1899.....	2.50	2.05	2.50	2.05	2.45	1.88	2.85	2.12	2.95	2.35	2.95	2.32	1.50	.85	.85	.65	.40	.25	
November, 1900.....	2.50	1.90	2.50	1.90	2.75	1.80	3.00	2.08	3.25	2.46	3.25	2.47	1.75	1.25	1.25	.75	.60	.25	
November, 1901.....	2.50	2.05	2.50	2.05	2.75	2.36	3.00	2.74	3.25	2.90	3.25	2.89	1.75	1.50	1.25	.90	.60	.25	
November, 1902.....	3.00	2.55	3.00	2.55	3.50	3.24	3.75	3.43	3.75	3.43	3.75	3.42	2.25	2.10	1.75	1.50	.90	.75	
November, 1903.....	3.00	2.55	3.00	2.55	3.50	2.79	3.75	3.22	3.75	3.22	3.75	3.22	2.25	1.50	1.75	1.07	.65	.30	
November, 1904.....	3.00	2.55	3.00	2.55	3.50	2.76	3.75	3.22	3.75	3.22	3.75	3.22	2.00	1.49	1.50	1.06	.65	.30	
November, 1905.....	3.00	2.55	3.00	2.55	3.50	2.74	3.75	3.22	3.75	3.22	3.75	3.22	1.75	1.50	1.25	1.00	.65	.30	
November, 1906.....	3.50	2.55	3.00	2.55	3.50	2.75	3.75	3.22	3.75	3.22	3.75	3.22	1.75	1.50	1.25	1.00	.65	.30	
November, 1907.....	3.50	2.55	3.00	2.55	3.50	2.75	3.75	3.25	3.75	3.25	3.75	3.25	2.00	1.60	1.50	1.10	.50	.50	
November, 1908.....	3.50	2.55	3.00	2.55	3.50	2.75	3.75	3.25	3.75	3.25	3.75	3.25	2.00	1.75	1.50	1.25	.75	.40	
November, 1909.....	3.50	2.55	3.00	2.55	3.50	2.75	3.75	3.20	3.75	3.25	3.75	3.25	2.00	1.75	1.50	1.25	.65	.40	
November, 1910.....	3.50	2.55	3.00	2.55	3.50	2.75	3.75	3.25	3.75	3.25	3.75	3.25	2.00	1.75	1.50	1.00	.65	.40	
November, 1911.....	3.50	2.55	3.00	2.75	3.50	2.75	3.75	3.25	3.75	3.25	4.00	3.40	2.00	1.75	1.50	1.00	.75	.40	
November, 1912.....	3.50	2.55	3.00	3.00	3.50	3.00	3.75	3.00	4.00	3.50	4.15	3.65	2.50	1.75	1.50	1.25	.85	.40	
November, 1913.....	4.25	3.00	3.00	3.00	3.50	2.95	3.75	3.50	4.00	3.70	4.15	3.75	2.50	2.10	1.50	1.05	.85	.40	

NOTE:—The above represent the prices received for our WHITE ASH Coals.
Philadelphia, May 6th, 1914.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

ES AND TIDEWATER (NEW YORK) FOR ALL SIZES OF ANTHRACITE COAL SOLD FOR THE MONTH OF NOVEMBER, AS FOLLOWS:—

SELLING PRICES F. O. B. MINES.									HIGH AND LOW SELLING PRICES F. O. B. TIDEWATER (NEW YORK).													
ESTNUT		PEA		BUCKWHEAT		RICE		BARLEY	BROKEN		EGG		STOVE		CHESTNUT		PEA		BUCKWHEAT		RICE		BARLEY	
gh	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low
80	2.63	1.25	.80	.75	.50	.30	.25			3.95	3.80	4.10	3.80	4.45	3.95	3.80	3.55	2.75	2.50	No Sales		No Sales			
50	1.69	1.30	.85	.85	.65	.32	.25			3.90	3.40	4.10	3.50	4.30	3.50	3.95	3.35	2.50	1.75	1.75	1.60	1.50	1.50		
80	2.30	1.30	.85	.85	.65	.30	.25			3.45	2.70	3.80	2.75	4.00	2.70	3.75	2.64	2.85	2.10	1.89	1.60	1.50	1.50		
80	2.29	1.30	.85	.85	.65	.30	.25			3.90	3.19	4.35	3.60	4.45	3.85	4.20	3.80	2.45	2.15	1.87	1.70	1.50	1.48		
80	2.07	1.50	.85	.85	.65	.30	.25			3.70	3.20	3.95	3.55	4.30	3.80	3.95	3.55	2.20	2.10	1.65	1.50	1.50	1.35		
95	2.32	1.50	.85	.85	.65	.40	.25			3.40	3.10	3.65	3.20	3.90	3.50	3.65	3.30	2.50	2.15	1.85	1.75	1.35	1.35		
25	2.47	1.75	1.25	1.25	.75	.60	.25			3.45	3.10	4.10	3.30	4.25	3.76	4.25	3.76	2.25	1.95	1.85	1.70	1.45	1.25		
25	2.89	1.75	1.50	1.25	.90	.60	.25			3.95	3.20	4.30	3.45	4.45	3.95	4.50	3.95	3.00	2.25	1.80	1.80	1.30	1.30		
75	3.42	2.25	2.10	1.75	1.50	.90	.75			3.95	3.45	4.35	4.20	4.55	4.40	4.65	4.40	2.90	2.50	2.20	2.00	No Sales			
75	3.22	2.25	1.50	1.75	1.07	.65	.30			4.70	3.95	4.95	4.95	4.95	4.95	4.95	4.95	3.00	3.00	No Sales		1.60	1.60		
75	3.22	2.00	1.49	1.50	1.06	.65	.30	.35	.35	4.70	4.20	4.95	4.95	4.95	4.95	4.95	4.95	2.85	2.85	2.40	2.35	1.50	1.45		
75	3.22	1.75	1.50	1.25	1.00	.65	.30	.35	.35	4.45	4.20	4.95	4.95	4.95	4.95	4.95	4.95	2.85	2.80	2.35	2.30	1.50	1.45		
75	3.22	1.75	1.50	1.25	1.00	.65	.30	.35	.35	4.70	4.20	4.95	4.95	4.95	4.95	4.95	4.95	2.85	2.80	2.35	2.30	1.60	1.45		
75	3.25	2.00	1.60	1.50	1.10	.50	.50	.35	.35	4.20	4.20	4.95	4.95	4.95	4.95	4.95	4.95	2.85	2.80	2.35	2.35	1.45	1.45		
75	3.25	2.00	1.75	1.50	1.25	.75	.40	.35	.35	4.50	4.20	4.95	4.85	4.95	4.95	4.95	4.85	3.20	2.85	2.45	2.35	1.70	1.70	1.50	1.45
75	3.25	2.00	1.75	1.50	1.25	.65	.40	.35	.35	4.20	4.20	4.95	4.95	4.95	4.95	4.95	4.95	3.20	2.95	2.45	2.35	1.70	1.70	1.45	1.35
75	3.25	2.00	1.75	1.50	1.00	.65	.40	.35	.35	4.20	4.20	4.95	4.70	4.95	4.95	4.95	4.95	3.20	2.95	2.45	2.35	1.70	1.70	1.45	1.35
00	3.40	2.00	1.75	1.50	1.00	.75	.40	.35	.35	4.20	4.20	4.95	4.95	4.95	4.85	5.20	5.10	3.20	2.95	2.45	2.35	1.70	1.50	1.45	1.35
15	3.65	2.50	1.75	1.50	1.25	.85	.40	.50	.50	4.95	4.45	5.20	5.20	5.20	5.45	5.45	5.45	3.45	2.95	2.45	2.45	1.95	1.60	1.70	1.60
15	3.75	2.50	2.10	1.50	1.05	.85	.40	.50	.50	4.45	4.35	5.20	5.10	5.20	5.10	5.45	5.35	3.35	3.35	2.45	2.45	1.95	1.95	1.70	1.55

No Barley sold until 1904.

No Barley Sold until 1907.

Adjourned until Wednesday, May 6, 1914, at 11 o'clock A. M.

Government's Counsel offer in evidence the following statement.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

STATEMENT SHOWING THE AVERAGE PRICES RECEIVED F. O. B. NEW YORK TIDEWATER FOR EACH SIZE OF ANTHRACITE CO. AND FOR ALL SIZES TAKEN TOGETHER, IN EACH CALENDAR YEAR FROM 1898 TO 1913, BOTH INCLUSIVE.

YEAR	STMR.	BRO.	EGG	STOVE	CHEST.	PEA	BUCK	RICE	BARLEY	SCREEN	AVERAGE
1898	3.72.7	3.26.9	3.72.6	4.05.2	3.68.8	2.33.5	1.78.6	1.45	.....	1.38.2	3.53.4
1899	3.73.1	3.18.7	3.48.8	3.93.6	3.75.6	2.18.7	1.78.4	1.26	.....	1.47.2	3.41.3
1900	3.75	3.29.9	3.74.7	4.22.3	4.12.5	2.27.6	1.77.9	1.29.6	.....	1.54.7	3.51.4
1901	4.30	3.61.6	4.17.3	4.61	4.52.4	2.68.3	2.11.5	1.34.4	.....	1.63.8	4.12.8
1902	4.05	3.78.6	4.52.9	4.76.8	4.62.6	2.79	2.18.7	1.61.7	.....	1.79.3	4.30.2
1903	4.91.7	4.27.6	4.91.7	5.11.8	5.00.2	2.87	2.36.3	1.46.6	.....	1.62.9	4.60.2
1904	.....	4.29.5	4.84	5.10.1	5.00.8	2.83.9	2.34.6	1.46.6	.....	1.50.4	4.09.5
1905	4.45	4.27.8	4.85.9	5.09.1	4.95.7	2.84.1	2.33.9	1.46.4	.....	1.49.9	4.04.6
1906	.....	4.24.7	4.88.6	5.13.7	5.02.9	2.84.8	2.35	1.46.6	.....	1.49.9	3.93.1
1907	.....	4.24.3	4.82.7	5.03.5	4.93.1	2.89.1	2.40.7	1.67.3	1.45.2	1.58.4	3.79.2
1908	.....	4.25.8	4.83.6	5.03.7	4.96.3	2.96.2	2.41.8	1.70.4	1.39.8	1.60	3.88.1
1909	.....	4.23	4.75	5.03.4	4.94.9	2.97.3	2.40.7	1.70.5	1.38.6	1.59.1	3.84.9
1910	.....	4.23.3	4.82.6	5.04.6	4.92.9	2.96.1	2.37.6	1.64.7	1.37.3	1.60.5	3.72.3
1911	4.45	4.22.6	4.78.6	4.99.3	5.06.5	2.96.5	2.40.4	1.77.5	1.48	1.60	3.63.7
1912	5.10	4.41.5	5.10.8	5.23.9	5.39	3.18.7	2.51.6	1.95.1	1.57.9	1.60	4.02.7
1913	5.10	4.48.6	5.05.5	5.19.8	5.35.9	3.35.2	2.45	1.99	1.61.8	1.59.9	4.47.5

Philadelphia, May 7, 1914.

Met pursuant to adjournment, at 2 Rector Street, New York City, Wednesday, May 6th, 1914, at 11 o'clock A. M.

Present—The Examiner; Messrs. Coudert, Kingsbury and Gordon, for Government; Jackson E. Reynolds, Esq., for defendants.

Government's counsel offer in evidence, to be marked **"Government's Exhibit 82,"** the Ruley Map. Mr. Reynolds advises that he has spare copies of this map, and, for the sake of convenience, will incorporate it, as Government's Exhibit 82, in defendant's map exhibits in this case.

Government's counsel offer in evidence the **testimony of Agnew T. Dice**, General Superintendent of the Philadelphia and Reading Railway Company, given in the "Old Reading Case," Volume 4 of Record, page 642, as follows:—

"Q. You may describe the service of the Port Reading Railroad Company at its terminal, after your service of transportation, delivering the coal into your yards, is ended, so as to get the coal over the piers into the vessels, the service of shifting in the yard to get the coal, as it is needed for a particular boat, up over the trestle or wharf on to the wharf, discharged, weighed and so forth. A. Roughly, we run over the Port Reading tracks with our through trains and from Port Reading Junction to Port Reading, which is seventeen miles, and at Port Reading make delivery of the loads to the Port Reading Railroad in their yard, and the Port Reading Railroad employs the engines and crews that do the local handling, switching cars on to the piers, unloading them, returning the empties to the yard.

Q. Do you know what allowance is made to the Port Reading Railroad Company for that service? A. I understand it is fifteen cents a ton.

Q. That applies to both bituminous and anthracite, I am told? A. I understand it so."

Government's counsel offer in evidence the **testimony of Charles E. Henderson,** in the "Old Reading Case," Volume 4 of Record, pages 572, 573, as follows:—

"Q. Do you remember the relations of the Port Reading Railroad Company and the Philadelphia and Reading Railway Company in respect of the operations and conduct of operations at the Port Reading terminal? Do you know whether or not the terminal service at Port Reading is rendered by the Port Reading Railroad Company and at its expense, or do you know as to the system of accounting as between the two companies? A. I never took that division as between the Philadelphia and Reading Railway and the Port Reading Railroad Company into account as much as the accounting officers who kept that separate, and would be better witnesses for that than I would be."

Government's counsel offer in evidence the **testimony of Joseph H. Harris,** in the "Old Reading Case," Volume 2 of Record, pages 10 and 11, as follows:—

"Q. When was the line constructed from Bound Brook down to Port Reading? A. That was before my presidency two or three years, I think.

Q. Was that operated by the Philadelphia and Reading Railroad Company while you were president? A. Yes, sir; I overlooked that.

Q. Then your tide-water terminus was Port Reading, in the harbor of New York, during the time you were president? A. Yes, sir; our tide-water terminus for coal business in New York Harbor was. We shipped nothing but coal there.

Q. And it is yet? A. Yes, sir; I overlooked the fact that we operated the Atlantic City Railroad, which ran down to the Jersey coast.

By MR. CAMPBELL:

Q. That was a separate corporation, and always was, was it not? A. It was; yes.

By Mr. McReynolds:

Q. It is operated by the Philadelphia and Reading Railway Company? A. No, sir; it is an independent organization.

Q. Does its stock belong to the Philadelphia and Reading Railway Company? A. Largely; yes.

Q. It is controlled by the Philadelphia and Reading Railway Company, is it not? A. Yes, sir.

Q. It is operated as part of its system, is it not? A. No; it is operated by its own officers.

Q. Were you president of the Atlantic City road while you were president of the Philadelphia and Reading? A. Yes, sir.

Q. Describe the general course over which anthracite coal passed when carried by The Philadelphia and Reading Railroad Company from the collieries in the southern coal field to New York Harbor? A. That coal very largely went to the tide-water at Port Reading, and some of it went to the tide-water termini of the New Jersey Central.

Q. What I want to get is a description of the route which the coal took from the collieries in the southern coal field. A. Some of it went down near to Philadelphia and took the Bound Brook road, and some of it went down by the Jersey Central. The majority of it went over the Bound Brook road.

Q. Did the Philadelphia and Reading Railway Company have a continuous line from the coal fields to the New York Harbor over which it sent its coal? A. Of what time are you speaking?

Q. I am speaking of while you were president. A. No; their only line to New York Harbor was the line to Port Reading. I do not know whether that is considered a part of New York Harbor or not.

Q. They had a continuous line of tracks from the coal regions in Pennsylvania down to Port Reading, on the harbor of New York, over which their coal came? A. Yes, sir.

Q. That coal was transported upon through bills of lading? A. I suppose it was.

Q. And is it the course over which the coal is carried to-day? A. Yes, sir."

Government's counsel offer in evidence extract from the **report of the President and Managers of the Philadelphia and Reading Railroad Company** for the year 1871, pages 16 and 17, as follows:—

"The repeated and serious interruptions of the business of the Company, caused by strikes in the coal region during the last few years, and the many fluctuations in the coal trade, produced by alternate periods of expansion and depression resulting therefrom, have directed the attention of the Managers of the Company to the necessity of exercising some control over the production of coal, so as to prevent a recurrence of the difficulties heretofore experienced; and it was believed that the best way of accomplishing this result, without injuriously affecting individual interests, was for the Company to become the owners of coal lands situate upon the line of its several branches.

In order to provide the means to make these purchases, a loan of twenty-five millions of dollars was authorized, and secured by a mortgage dated the first day of June last, executed to The Fidelity Trust and Safe Deposit Company, of Philadelphia—a copy of which mortgage is annexed to this report. Of the loan thus authorized, $6,000,000 of bonds will be retained to retire the previous mortgage bonds of the Company, amounting in the aggregate, at the date of the mortgage, to $5,801,200, and of the balance, $11,962,000 have already been issued for the purchase of coal lands."

Government's counsel offer in evidence extract from the **Report of the Board of Managers of the Lehigh Coal and Navigation Company** dated February 28th, 1888, page 11, as follows:—

"This contract has unified the interests of this Company with those of the Central Railroad Company to a

greater extent than has been found possible hitherto, so that any development which shall bring business to one company is likely to cause corresponding benefits to the other, and the energy and enterprise of the new management of the Central Railroad Company give promise of a profitable development of its business."

Government's counsel offer in evidence extract from House Document 1442, 62nd Congress, Third Session, entitled **"Increase in Prices of Anthracite Coal,"** pages 37 and 38.

MR. GORDON:—It is understood that the quotation there given is from the report of the Board of Managers of the Lehigh Coal and Navigation Company for the year 1911, pages 8, 9 and 10.

MR. REYNOLDS:—I object to any conclusion drawn by the clerical compiler of this House Document as to the meaning of the quotations of the reports of the boards of managers of the Lehigh Coal and Navigation Company being incorporated in the Record as evidence, as it is manifestly merely a conclusion, hearsay, and incompetent.

MR. GORDON:—It is also understood that this report was prepared under the direction of Mr. Nagel, the Commissioner of Labor.

MR. REYNOLDS:—The objection is made to any deductions of Mr. Nagel, Commissioner of Labor, as being manifestly conclusions, hearsay, improper evidence, and incompetent.

The extract offered is as follows:—

"With relation to this question of coal-land depletion funds, the experience of company E is of significance. This experience, which is best related in the reports of the board of managers of the company, extracts from which are given below, may be briefly summed up as showing that the deduction of 5 cents a ton on its production for five years was sufficient to create a fund, which, com-

pounded at 4 per cent. for 40 years without further additions, would equal the actual cost of the company's coal lands.

REPORT OF THE BOARD OF MANAGERS OF COMPANY E FOR YEAR ENDING DECEMBER 31, 1905.

For many years the company has made a deduction from its net revenue before paying dividends of an annual sum under the head of sinking fund, based on a charge of 5 cents a ton on the coal sent to market from its coal lands. This money has been invested in various forms of property now included in the company's assets, but no separate account has been kept of the same. After due consideration your board of managers has directed that a charge should be made in this year's accounts and the proceeds invested in interest-bearing securities and that the securities and the interest received on them should be kept separate and apart as a distinct fund. In accordance therewith, the sum of $121,415 has been deducted from the net revenue of the company for the year 1905 and $121,000 thereof invested in 5 per cent. bonds. * * * In this connection it is of interest to note that if a similar plan had been followed since the first shipment of coal by this company in 1820 and the interest compounded at 4 per cent. the resultant sum would be over $9,000,000, or enough to wipe out all the capital charges now on the company's balance sheet representing coal lands, coal improvements, opened work, and mining equipment.

The coal-lands sinking fund at 5 cents a ton will, it is estimated, at 4 per cent. compound interest create a fund which will in less than 30 years be sufficient to wipe out all the charges on the balance sheet, amounting to $9,066,770, representing our investment in coal lands, coal improvements, opened work, and mining equipment. Experts estimate that the supply of coal now owned by this company will not be exhausted for over 170 years. It would therefore appear that this fund has ample margin.

Reliable and conservative estimates made of the unmined coal on the company's lands still available for market make a total of over 500,000,000 tons. At 1 cent per ton this tonnage would equal $5,000,000, or more than the sum of $4,891,232 at which our coal lands are carried on the balance sheet. The above valuation represents the cost of acquiring these lands many years ago, but their real value is very much in excess of this sum.

REPORT OF THE BOARD OF MANAGERS OF COMPANY E FOR YEAR ENDING DECEMBER 31, 1911.

The securities and cash set apart in the coal-lands sinking fund now amount to $1,031,131.07.

The increase of $43,388.23 during 1911 was derived entirely from income upon investments.

The fund has now reached such proportion that with the accretions due to the investment of its annual income at 4 per cent. it will in a period of 40 years equal the value at which our coal lands are carried upon the books of the company; and under the circumstances your board of managers is of the opinion that appropriations for this fund direct from income are no longer desirable."

Government's Counsel offer in evidence from the **Report of the Committee to investigate the condition of the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company,** appointed January 12th, 1885 (being a part of the same document from which the exhibit on printed page 127 *et seq.* of the record was taken), the cover page; pages 1 and 2; and an extract from page 63.

MR. REYNOLDS:—The defendants object to the admission of this evidence as being incompetent, as against any of the defendants on this record, as irrelevant and immaterial, preceding, as it does, both the passage of the Anti-Trust Law and the re-organization of the Reading Companies.

The cover of said Report is as follows:—

"REPORT

of the

COMMITTEE TO INVESTIGATE

the Condition of

THE PHILADELPHIA & READING RAILROAD CO.

and

THE PHILADELPHIA & READING COAL AND IRON CO.,

Appointed January 12, 1885,

By

Direction of the Stockholders.

CHARLES H. T. COLLIS, *Chairman*,
JOHN L. LAWSON,
H. C. FORD,
F. F. MILNE,
ED. P. DWIGHT,
CHARLES D. FREEMAN."

Pages 1 and 2 of said Report are as follows:—

"To the

STOCKHOLDERS

of

THE PHILADELPHIA & READING
RAILROAD COMPANY.

PHILADELPHIA, December 28, 1885.

To the shareholders of The Philadelphia and Reading Railroad Company:

At your last annual meeting, held January 12, 1885, the following resolutions were unanimously passed:

Resolved, That the report of the Board of Directors, as just read, be printed in pamphlet form for the information of the shareholders, and that a committee of seven shareholders of the company, entirely disconnected from its management and operation, be appointed by the chairman of this meeting, and by him be requested to serve as a committee to examine the report, and examine into the condition of the company, to make an appraisement of the value of the roads, shops, machinery, real estate, depots, bonds, stocks and all other assets of the company; also to examine into the liabilities and obligations of the company, including all its guarantees for other lines, with the sources of revenue to meet the same; also its contracts and relations with other companies and parties of every kind; and to report the results of this examination to the shareholders in such form as said committee may deem most advisable for the interest and information of the shareholders, either by printed report for distribution, or at their option, by calling a meeting of the shareholders to present their report, giving thirty days' notice of such meeting by advertising in the usual form.

Resolved, That the president, managers and officers of the Company, and the receivers appointed by the Court, be requested to furnish such committee with all needful information, and facilities to enable them to accomplish the object of their appointment.

Resolved, That in the event of any of the shareholders declining or being unable to serve on the foregoing committee, the chairman of this meeting be authorized and requested to fill such vacancies by the appointment of other shareholders of this company, who may be in like

manner entirely disconnected from its management and operation.

In pursuance of this resolution, the undersigned, together with John Taylor, Esq., of London, were appointed said committee by Edward S. Whelen, Esq., the chairman of the meeting. It is to be regretted that Mr. Taylor has not been able to give your Committee the benefit of his knowledge and experience, owing to business engagements which prevented his visiting this country.

Your Committee not being clothed with power to expend money, and in fact not desiring to do so in the existing financial condition of the company, have confined their investigations to an examination of documents and books; an inspection of so much of the property as would enable them to form an accurate estimate of the condition of the whole; and an examination of the officers of the company superintending and directing the various departments thereof."

The extract from page 63 of said Report is as follows:—

"Conclusion.

In conclusion, if this report should prove to be most remarkable for the number of subjects it omits to discuss in detail, it must be borne in mind that your Committee was not raised at the suggestion of managers desiring to furnish the public with an exhaustive statement of their history and condition, but by the shareholders themselves who were in search of such information as ordinary but unskilled intelligence could procure. In the one case data is promptly furnished which makes compilation simple; in the other those who undertake the task have first to educate themselves as to the information most required, then to learn from whom to obtain it and finally to form a judgment upon data which at best may be but meagre. Your Committee desire to record the fact that the Receivers and officers of the company afforded them every opportunity to

obtain the information they needed, and at all times furnished them promptly with such statements as were called for.

Under the authority of your resolution we submit this result of our investigations, by "printed report for distribution," and this concludes our labors and dissolves the Committee.

Respectfully,

CHARLES H. T. COLLIS,
Chairman.
JOHN L. LAWSON,
CHARLES D. FREEMAN,
H. C. FORD,
E. P. DWIGHT,
F. F. MILNE."

Government's counsel offer in evidence, from the report of the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company, Appendix page 1-L, a statement from the balance sheet dated February 28, 1893, of the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company, as follows:—

"PHILADELPHIA AND READING COAL AND IRON CO.

	DR.	CR.
To Freight and Tolls	$5,699,715.23	
To Guaranteed Interest	217,260.00	
By Special Loan Account		$2,681,076.15
By Sundries (Interest)		20,930.00
By Finance Company of Pennsylvania for amount due it for supply coal		882,064.55
By Balance		2,332,904.53
	$5,916,975.23	$5,916,975.23

Government's counsel offer in evidence **General Mortgage of Reading Company and the Philadelphia and Reading Coal and Iron Company** to Central Trust Company of New York, Trustee, dated January 5, 1897, as follows:—

PREAMBLE.

This Indenture, made this fifth day of January, in the year one thousand eight hundred and ninety-seven, between

READING COMPANY, a corporation created by and existing under the laws of Pennsylvania, party of the first part, and

THE PHILADELPHIA AND READING COAL AND IRON COMPANY, a corporation created by and existing under the laws of Pennsylvania, hereinafter called the "Coal Company," party of the second part, said two parties being hereinafter called the "Companies," and

CENTRAL TRUST COMPANY, of New York, a corporation created by and existing under the laws of the State of New York, hereinafter called the "Trustee," party of the third part.

Acquisition by Reading Company from C. H. Coster, F. L. Stetson and J. P. Morgan & Co.

WHEREAS, the Reading Company, party of the first part, owns, possesses and controls divers estates, lands, properties, rights, privileges, franchises, bonds and shares of capital stock, including capital stock of the Philadelphia and Reading Railway Company and capital stock of The Philadelphia and Reading Coal and Iron Company; all of which have been received by the Reading Company, by, under and in pursuance of certain deeds of conveyance and transfer, made or authorized by Charles H. Coster and Francis Lynde Stetson, or by the said Charles H. Coster, Francis Lynde Stetson and J. P. Morgan & Co.; and

Acquisition by Coal Company from C. H. Coster and F. L. Stetson

WHEREAS, the Coal Company, party of the second part, owns coal lands, and other real estate, and certain railroads and branches, mines, collieries, breakers, engines, workshops, tenements and hereditaments, yards, depots, wharves and equipment; all of which have been received by the Coal Company,

by, under and in pursuance of certain deeds of conveyance and transfer, made or authorized by Charles H. Coster and Francis Lynde Stetson; and

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WHEREAS, All such properties have been received by the Reading Company and by the Coal Company, severally and respectively, under and upon their several and respective promises and agreements, among other things, to make, execute and issue the joint and several bonds of the Reading Company and of the Coal Company as herein provided, including a limited issue thereof from time to time to be made to J. P. Morgan & Co., or their survivors and successors, and further issues thereafter to be made for the redemption and acquisition of bonds and stocks and equipment liens, and for new acquisitions, constructions and betterments, and other purposes, all as herein provided; and

ubject to
rtain exist-
g liens and
bligations
the P. &
. R. Co.

WHEREAS, portions of the real estate and equipment of the Reading Company are subject to the lien of certain mortgages and equipment obligations heretofore made by The Philadelphia and Reading Railroad Company, of which mortgages some are liens also upon certain of the property now of the Philadelphia and Reading Railway Company; and

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ons of the
. & R. C. &
Co.

WHEREAS, portions of the lands of The Philadelphia and Reading Coal and Iron Company (hereinafter called the "Coal Company") are, or, on January 1st, 1897, were, subject to a mortgage securing a bond of $30,000,000, pledged as collateral as hereinafter stated, and were also subject to mortgages, for an aggregate principal sum of $12,050,606.46, as follows:

Loan.	Lands Mortgaged to Secure Bonds.	Bonds Outstanding.	Due.	
West Point	Putnam County (N. Y.) iron ore lands	$204,000 00	June 1, 1884	P. & R. C. & I. Co. Undisturbed Mortgages.
Farquhar	Raudenbush and Struphauer tracts	110,000 00	Nov. 1, 1888	
Richardson	Catharine Groh tract	346,000 00	Jan. 1, 1897	
Carey Hart *et al*	St. Clair tract	273,000 00	"	
Beatty	Eagle Hill tract	40,000 00	"	
Charles Baber	" &c., tract	106,000 00	"	
Mattson	" "	30,000 00	"	
Wetherill	Lee Lands, Oak Hill tract	347,000 00	"	
Brady	Brady, Gray, and Wetherill tracts	187,000 00	"	
Locust Mountain	Locust Mountain Summit Improvement Co. lands	222,000 00	"	
Tamaqua	Tamaqua Company's lands	1,596,000 00	"	
Munson and Williams	Munson and Williams lands	800,000 00	Feb. 1, 1897	
Glentworth	Glentworth tract	203,000 00	March 1, 1897	
William Bowers *et al*	William Jones tract	153,000 00	April 1, 1897	
Philadelphia and Mahanoy	Philadelphia and Mahanoy Coal Company	512,000 00	"	
Shamokin and Bear Valley	Shamokin and Bear Valley Coal Company	283,000 00	"	
Swatara	Swatara Company's lands	970,000 00	"	
Van Reed	Big Schall tract	22,000 00	May 1, 1897	
Lessig	West Flowery Field tract	17,000 00	"	
Cummings	Reed tract	18,000 00	June 1, 1897	
Merino	"	18,000 00	"	
Wood	Wood estate	49,000 00	"	
Walker	Hartman and Myer, &c., tracts	145,000 00	"	
Forbes and Delano	Forbes and Delano, &c., tracts	509,000 00	"	
Mt. Carmel	Mt. Carmel Locust Mountain Coal Company	325,000 00	July 1, 1897	
Joseph Jeanes	Minersville estate	136,000 00	July 6, 1897	
Dale	Diamond tract	26,000 00	"	
Hammett	McNeal tract	104,000 00	Aug. 1, 1897	
Hughes	Hartman and Myer tract	13,000 00	Sept. 2, 1897	
C. Tower	Houtz and Myer and Kinnear tracts	231,000 00	Oct. 1, 1897	
S. Huston	Fishing Creek Improvement Company	460,000 00	Nov. 1, 1897	
Helfenstein	Helfenstein tract	408,000 00	"	
Ahl	Big Pond Furnace estate	91,000 00	"	

Loan.	Lands Mortgaged to Secure Bonds.	Bonds Outstanding.	Due.
Hartman and Myer	Hartman and Myer tract	$20,000 00	Dec. 1, 1897
Hart Lea *et al.*	Coal Hill estate	61,000 00	Jan. 1, 1898
Kemble	Gunkle and Branham tract	15,000 00	"
Big Mountain	Big Mountain Improvement Company	111,000 00	"
Jackson	McNeal tract	44,000 00	Feb. 1, 1898
Isaac May	Rockafeller tract	33,000 00	May 1, 1898
Riehle	Ely and Riehle tract	160,000 00	May 16, 1898
Valley Furnace	Valley Furnace estate	1,240,000 00	July 1, 1899
Albright	Western real estate	296,000 00	Mch. 1, 1902
Chandler	Salem Coal Company's lands	150,000 00	April 1, 1902
Little Schuylkill Navigation	Tamaqua Company's lands	152,000 00	Oct. 1, 1902
Leonard Reed	Leonard Reed tract	24,500 00	Mch. 1, 1903
Krause	Summit lands	357,000 00	April 1, 1904
Total		$11,617,500 00	

Loans.	Real Estate Bonds.	Bonds Outstanding.	Due.
Insurance Company of North America	Pottsville shops	$60,000 00	Now due.
Emily Hewson	McNeal tract	10,000 00	"
Ella Hewson	"	10,000 00	"
Jane B. Hewson	"	10,000 00	"
Executors estate James Dundas, deceased	Catharine Groh tract	55,000 00	"
Biddle Meredith *et al.*	Lewis, Farmer or Bell tract	10,000 00	"
New York Life Insurance Company	Adams Street Yard, Brooklyn, N. Y.	40,000 00	"
Jabez Sparks	Coal Street lots, Pottsville, Pa.	8,500 00	"
C. W. Barker	Coal Street lots, Pottsville, Pa.	4,000 00	"
H. Guiterman	Tuscarora tract	4,239 46	"
Locust Dale Coal Company	Locust Dale estate	156,000 00	Oct. 1, 1886
Bechtelsville Iron Company	Bechtelsville furnace	58,000 00	Oct. 10, 1888
Amanda Grim	Porter Township property	7,000 00	July 11, 1900
Mary Fisher, dower	Lacy lot, Pottsville, Pa.	367 00	At death.
Total		$433,106 46	

& R. C. & Co. Undistributed Mortgage.

AND WHEREAS, at a meeting of the Board of Directors of the Reading Company, held at its office in the City of Philadelphia on the 23d day of December, in the year eighteen hundred and ninety-six, the draft of a mortgage or deed of trust in the form of this indenture was submitted and read, and a resolution in the following words was duly and unanimously adopted, viz.: Resolution of Reading Directors authorizing this mortgage 23 Dec., 1896.

Resolved. That the President and the Secretary of the Reading Company be, and they are hereby, authorized and directed, in its behalf and under the corporate seal, when approved by the stockholders, and in form substantially that now submitted to this Board, to execute and deliver a mortgage or deed of trust upon the property and franchises of the corporation, to be known as the "General Mortgage," to the Central Trust Company of New York, as trustee, to secure an issue of bonds for an aggregate principal sum not exceeding $135,000,000; the principal of such bonds to be payable in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1997, at the office or agency of the Reading Company in the City of New York, with interest thereon at the rate of four per cent. per annum from January 1, 1897, payable semi-annually, at said office or agency, in like gold coin, on the first days of January and July in each year; such bonds to be issued and disposed of on the terms and conditions, for the purposes, and in the manner set forth in said form of mortgage; each and every of such bonds to be executed also by The Philadelphia and Reading Coal and Iron Company, and to be secured by the pledge of the property of that corporation, as set forth in the said form of mortgage.

AND WHEREAS, at a meeting of the Board of Directors of the Coal Company held at its office in the City of Philadelphia on the 23d day of December, in the year eighteen hundred and ninety-six, the draft of a mortgage or deed of trust in the form of this indenture was submitted and read, and a resolution in the following words was duly and unanimously adopted, viz.: Resolution of Coal Directors authorizing this mortgage 23 Dec., 1896.

Resolved. That in compliance with the obligation of this corporation, by it assumed as a condition of the acquisition and purchase of its property under the deed thereof from Charles H. Coster and Francis Lynde Stetson, dated November

18, 1896, the President and the Secretary of The Philadelphia and Reading Coal and Iron Company be, and they are hereby, authorized and directed, in its behalf and under the corporate seal, when approved by the stockholders, and in form substantially that now submitted to this Board, to execute and deliver a mortgage or deed of trust upon the property and franchises of the corporation, to be known as the General Mortgage, to Central Trust Company, of New York, as trustee, to secure an issue of bonds for an aggregate principal sum not exceeding $135,000,000, the principal of such bonds to be payable in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1997, at the office or agency of the Reading Company, in the City of New York, with interest thereon at the rate of four per cent. per annum, from January 1, 1897, payable semi-annually at said office or agency in like gold coin on the first days of January and July in each year; such bonds to be issued and disposed of on the terms and conditions, for the purposes, and in the manner set forth in said form of mortgage; each and every of such bonds to be executed also by the Reading Company, and to be secured by the pledge of the property of that corporation, as set forth in the said form of mortgage.

Denominations and numbers of bonds.

AND WHEREAS, the bonds to be secured by this indenture are to be coupon bonds of the denomination of $1,000, numbered consecutively from M1 upwards, and registered bonds of the denominations of $500, $1,000, $5,000 and $10,000 numbered consecutively and respectively from D1, M1, VM1 and XM1 upwards, and all bonds, from time to time, as directed severally and respectively by the Board of Directors of the Reading Company and by the Board of Directors of the Coal Company, are to be executed in the names and on behalf of the said Companies jointly and severally and under their respective corporate seals by their respective Presidents, or any Vice-President, and their respective Secretaries, or Assistant Secretaries, and are to be substantially of the following tenor, to wit:

[FORM OF COUPON BONDS.]

No. $1,000. Form of Coupon Bonds.

UNITED STATES OF AMERICA.

STATE OF PENNSYLVANIA.

READING COMPANY, AND THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

GENERAL MORTGAGE 4% GOLD BOND.

KNOW ALL MEN BY THESE PRESENTS, THAT READING COMPANY and THE PHILADELPHIA AND READING COAL AND IRON COMPANY, corporations of the State of Pennsylvania, hereinafter called the "Companies," for value received, jointly and severally promise to pay to the bearer, or, if registered, to the registered holder of this bond, One Thousand Dollars, gold coin of the United States of America of the present standard of weight and fineness, on the first day of January, in the year 1997, at the office or agency of the Reading Company, in the City of New York, N. Y., and to pay interest thereon at the rate of four per cent. per annum, from January 1, 1897, payable semi-annually at said office or agency, in like gold coin, on the first days of January and July in each year, but only upon presentation and surrender of the annexed coupons as they severally mature.

Both the principal and interest of this bond are payable without deduction for any tax or taxes of the United States or any State or Municipality thereof, which the Companies, or either of them, may be required to pay, or to retain therefrom, under any present or future law.

This bond is one of a series of coupon and registered bonds of the Companies known as "General Mortgage 4% Gold Bonds," duly authorized and approved by the Board of Directors and the Stockholders severally of each of the Companies, and issued and to be issued, to an amount not exceeding, in the aggregate, $135,000,000 at any one time outstanding; all of which bonds are issued under, and in pursuance of, and are equally secured by, a mortgage or deed of trust dated January 5th, 1897, executed by the Companies to the Central Trust Company of New York, a corporation of the State of New York, as Trustee, of all the property and franchises of the Companies mentioned in said mortgage or deed of trust, to which reference is hereby made for a description of the property and franchises mortgaged and the nature and extent of the security, and the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond may be registered as to principal in the owner's name on the books of the Companies at the office or agency of the Reading Company in the City of New York, such registry being noted on the bond by the Companies' transfer agent, after which no transfer shall be valid unless made on the Companies' books by the registered owner and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which transferability by delivery shall be restored; but it may again from time to time be registered or transferred to bearer as before; such registration, however, shall not affect the negotiability of the coupons by delivery merely. This bond is also exchangeable for registered bonds without coupons, as provided in said mortgage or deed of trust.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage or deed of trust.

IN WITNESS WHEREOF, the Reading Company and The Philadelphia and Reading Coal and Iron Company severally have caused these presents to be signed by their respective Presidents or Vice-Presidents, and their respective corporate seals to be hereunto affixed, and to be attested by their respective Secretaries or Assistant Secretaries, and coupons for said interest, with the engraved signature of their respective Treasurers, to be attached hereunto this fifth day of January, 1897.

READING COMPANY,

By

President.

Attest:

Secretary.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,

By

President.

Attest:

Secretary.

[FORM OF REGISTERED BONDS.]

Form of registered bonds.

UNITED STATES OF AMERICA,

STATE OF PENNSYLVANIA.

READING COMPANY, AND THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

GENERAL MORTGAGE 4% GOLD BOND.

No. $

KNOW ALL MEN BY THESE PRESENTS, that READING COMPANY and THE PHILADELPHIA AND READING COAL AND IRON COMPANY, corporations of the State of Pennsylvania, hereinafter called the "Companies," for value received, jointly and severally promise to pay or assigns, the sum of dollars, gold coin of the United States of America of the present standard of weight and fineness, on the first day of January, in the year 1997, at the office or agency of the Reading Company in the City of New York, and to pay interest thereon from the first day of January or July, as the case may be, next preceding the date hereof, at the rate of four per cent. per annum, payable semi-annually, in like gold coin, at said office or agency, on the first days of January and July in each year.

Both the principal and interest of this bond are payable without deduction for any tax or taxes of the United States or any State or Municipality thereof, which the Companies, or either of them, may be required to pay, or to retain therefrom, under any present or future law.

This bond is one of a series of coupon bonds and registered bonds of the Companies, known as "General Mortgage 4 Per Cent. Gold Bonds," duly authorized and approved by the Board of Directors and the Stockholders severally of each of the Companies, and issued and to be issued, to an amount not exceeding in the aggregate $135,000,000 at any one time outstanding; all of which Bonds are issued under and in pursuance of, and are equally secured by, a mortgage or deed of trust, dated January 5th, 1897, executed by the Companies to the Central Trust Company of New York, a corporation of the State of New York, as Trustee, of all the property and franchises of the Companies mentioned in said mortgage or deed of trust, to which reference is hereby made for a description of the property and franchises mortgaged, and the nature

and extent of the security, and the rights of the holders of said bonds, under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof, in person or by attorney duly authorized, on the books of the Companies at the office or agency of the Reading Company in the City of New York, upon surrender and cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, as provided in said mortgage or deed of trust, and on payment, if the Companies shall so require, of the charge therein provided for.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage or deed of trust.

IN WITNESS WHEREOF, the Reading Company and The Philadelphia and Reading Coal and Iron Company severally have caused these presents to be signed by their respective Presidents or Vice-Presidents, and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries or Assistant Secretaries this day of

READING COMPANY,
By

President.

Attest:

Secretary.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,
By

President.

Attest:

Secretary.

AND WHEREAS, there are to be annexed to the said coupon bonds, at the time of the issue thereof, the coupons representing the semi-annual interest installments which may become due thereon to and including the first day of January, 1997, each of which coupons is to be substantially of the following tenor:

[FORM OF INTEREST COUPON, OF WHICH THE FIRST IS TO BE PAYABLE JULY 1, 1897.] Form of Coupons.

No. $

On the first day of , , Reading Company and The Philadelphia and Reading Coal and Iron Company will pay to bearer at the office or agency of the Reading Company in the City of New York, N. Y., Twenty dollars gold coin, without deduction for taxes, being six months' interest then due on their General Mortgage Gold Bond No.

Treasurer of Reading Company.

Treasurer of The P. & R. C. & I. Co.

AND WHEREAS, the coupons to be attached to said bonds are to be authenticated by the engraved signature of the present Treasurer or of any future Treasurer, respectively, of the two several Companies, it being intended that each of the Companies may adopt and use for that purpose the engraved signature of any person who shall have been its Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such bonds shall be actually certified and delivered, or when such coupons shall be attached to the bonds; Authentication of Coupons.

AND WHEREAS, there is to be endorsed on each of such bonds a certificate of the Trustee that it is one of the General Mortgage Gold Bonds herein described, and no bond will be valid or obligatory for any purpose until such certificate shall have been executed by the Trustee, such certificate to be substantially of the following tenor, viz.:

[FORM OF TRUSTEE'S CERTIFICATE.] Form of Trustee's Certificate.

This bond is one of the series of General Mortgage Gold Bonds described in the within-mentioned Mortgage or Deed of Trust executed by the Reading Company and The Philadelphia and Reading Coal and Iron Company to the undersigned.

CENTRAL TRUST COMPANY OF NEW YORK,
Trustee.

By

Vice-President.

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, 1897.

AND WHEREAS, at a meeting of the stockholders of the Reading Company, held at Philadelphia, in the State of Pennsylvania, on the fifth day of January, 1897, at which the holders of all the shares of its capital stock were present or represented by proxy, it was duly and unanimously resolved that the execution and delivery of a mortgage or deed of trust upon the property and franchises of the Reading Company under and in accordance with the above-recited resolution of the board of directors of the Reading Company, adopted on the twenty-third day of December, 1896, be approved and authorized and that such mortgage or deed of trust be in the form of this indenture;

Stock-
rs' ap-
, 1897.

AND WHEREAS, at a meeting of the stockholders of the Coal Company, held at Philadelphia, in the State of Pennsylvania, on the fifth day of January, 1897, at which the holders of all the shares of its capital stock were present or represented by proxy, it was duly and unanimously resolved that the execution and delivery of a mortgage or deed of trust upon the property and franchises of the Coal Company under and in accordance with the above-recited resolution of the board of directors of the Coal Company, adopted on the twenty-third day of December, 1896, be approved and authorized and that such mortgage or deed of trust be in the form of this indenture;

ting
e.

Now, therefore, this indenture witnesseth:

That in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which such bonds are issued and received, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to each of

the Companies severally and respectively duly paid by the Trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby severally acknowledged:

(1) **The Reading Company**, party of the first part, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over, unto THE TRUSTEE, party of the third part, its successors and assigns forever:

Properties mortgaged by Reading Company.

ALL AND SINGULAR the following estates, lands, properties, rights, privileges and franchises, and bonds and shares of capital stock, viz.:

Real Estate acquired under deed of Dec. 23, 1896, from Coster & Stetson.

FIRST. ALL REAL ESTATE of every name and description formerly of The Philadelphia and Reading Railroad Company, to the extent that, and as, the same is described in several certain deeds dated December 23d, 1896, from Charles H. Coster and wife and Francis Lynde Stetson and wife to the Reading Company, to be recorded respectively in the several counties in the State of Pennsylvania in which the said real estate is situated; but not including any right of way, depots or yards formerly of the said Railroad Company, or formerly of any railroad by it held under lease, or any real estate appertaining to the railroad thereof; subject, however, to any and all liens, encumbrances and charges thereon.

P. & R. R. R. Co. Equipment.

SECOND. ALL LOCOMOTIVES, tenders, passenger cars, baggage cars, freight cars, coal cars, and all other engines, cars, carriages and rolling stock formerly of The Philadelphia and Reading Railroad Company.

P. & R. R. R. Co. Maine Equipment.

THIRD. ALL STEAM COLLIERS, VESSELS, canalboats and barges formerly of The Philadelphia and Reading Railroad Company, including specifically those enrolled in the office of the Collector of Customs of the Port of Philadelphia as having heretofore been transferred directly to the Reading Company

by Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers (such transfers having been made at the request of Charles H. Coster and Francis Lynde Stetson), and including the barges which are registered in the name of the Provident Life and Trust Company as security for Car Trust Series D of The Philadelphia and Reading Railroad Company.

nds of her corpotions.

FOURTH. CERTAIN BONDS of the several following corporations, to be delivered to the Trustee as hereinafter provided, and for several aggregate principal sums as follows, viz.:

Philadelphia and Reading Railway Company	$20,000,000
Catawissa Railroad Company:	
10% Chattel Mortgage Bonds, 1868–1888	98,450
5% " " " 1880	24,500
7% Debenture Bonds, 1917	62,000
7% Improvement Mortgage Bonds	500,000
Camden County R. R. Co	39,000
Colebrookdale Railroad Company:	
Mortgage Bonds	593,400
Gettysburg & Harrisburg R. R. Co. Car Trusts	18,000
People's Railway Company	36,000
Perkiomen Railroad Company	161,100
Philadelphia, Reading & Pottsville Telegraph Co	200,000
Philadelphia & Chester Valley R. R. Co.:	
(*a*) Preferred	25,000
(*b*) Not Preferred	47,000
Philadelphia, Harrisburg & Pittsburg R. R. Co	1,472,000
Philadelphia, Newtown & New York R. R. Co	849,100
Pickering Valley Railroad Company:	
First Mortgage Loan	332,300
Reading & Columbia R. R. Co.:	
First Mortgage	9,500
Second "	35,000
Debentures	1,000,000
Schuylkill and Lehigh R. R. Co	108,300
Tamaqua, Hazleton & Northern R. R. Co	300,000
Schuylkill Navigation Company:	
Loan, 1872	1,685,590
" 1882	3,940,646
Improvement Loan (Loan of 1880)	228,000
Loan of 1895	1,181,000
Boat and Car Loans	1,320,050

Together with such overdue coupons belonging to any such bonds as shall at any time be delivered to the Trustee.

FIFTH. THE FOLLOWING SHARES OF CAPITAL STOCK NOW BELONGING to the Reading Company for which proper certificates are to be transferred, either by the Reading Company or by the record holder of the certificates for such shares, to the Trustee as hereinafter provided: Stock of other corporations

I.

Shares of capital stock, being in each instance the entire outstanding capital stock of the company (other than such shares as are reserved to qualify directors): I. Total stock of other corporations.

	Shares.	Par Value.
Philadelphia & Reading Railway Co	399,900	$19,995,000
Philadelphia & Reading Coal & Iron Co	159,900	7,995,000
Chester & Delaware River R. R. Co	750	37,500
Danville & Shamokin R. R. Co	4,900	245,000
Delaware River Ferry Co of New Jersey	4,900	490,000
Middletown & Hummelstown R. R. Co	3,400	170,000
Norristown Junction R. R. Co	350	17,500
Philadelphia & Frankford R. R. Co	9,979	498,950
Philadelphia, Reading & Pottsville Telegraph Co	369	18,450
Philadelphia & Reading Terminal R. R. Co	169,950	8,497,500
Philadelphia, Harrisburg & Pittsburg R. R. Co	39,900	1,995,000
Port Reading R. R. Co	15,550	1,555,000
Rupert & Bloomsburg R. R. Co	960	48,000
Schuylkill and Lehigh Railroad Company	960	48,000
Shamokin, Sunbury & Lewisburg R. R. Co	39,900	1,995,000
Tamaqua, Hazleton & Northern R. R. Co	5,900	295,000
Reading Iron Company	9,980	998,000

II.

Shares of capital stock, being in each instance more than one-half of the entire outstanding capital stock of the company mentioned: II. Majority stock of other corporations.

	Shares.	Par Value.
Atlantic City Railroad Company:		
(*a*) Preferred	19,971	$998,550
(*b*) Common	23,900	1,195,000
Allentown Railroad Company	21,428	1,071,400
Catasauqua & Fogelsville R. R. Co	10,065	251,625
Colebrookdale Railroad Company	5,530	276,500
Camden County Railroad Company	1,000	50,000
East Mahanoy Railroad Company	5,600	280,000
East Pennsylvania Railroad Company	17,500	875,000
Gettysburg & Harrisburg R. R. Co	10,700	535,000
North-east Pennsylvania R. R	6,300	315,000
Pickering Valley Railroad Company	1,200	60,000
Philadelphia & Chester Valley R. R. Co.:		
(*a*) Preferred	4,102	205,100
(*b*) Common	9,000	450,000
Reading and Columbia Railroad Company	15,700	785,000

III.

I. Minority stock of other corporations.

Miscellaneous shares of capital stock:

	Shares.	Par Value.
Catawissa Railroad Company:		
(*a*) First preferred	228	$11,400
(*b*) Second preferred	310	15,500
Central Dock & Terminal Ry. Co	1,816	181,600
Junction Railroad Company	1,718	85,900
Mine Hill & Schuylkill Haven R. R. Co	1,620	81,000
Mill Creek & Mine Hill Navigation & R. R. Co	1,900	47,500
Mount Carbon & Port Carbon R. R. Co	750	37,500
North Pennsylvania Railroad Company	2,576	128,800
Philadelphia Belt Line R. R. Co., preferred	1,560	78,000
People's Railway Company of Pottsville	2,675	53,500
Schuylkill Valley Navigation & R. R. Co	1,220	61,000
Swede's Ford Bridge Company	360	9,000
Slatington Railroad Company	3,900	19,500

All interest of Reading Company, now or hereafter held in other shares of above corporations.

SIXTH. ALL RIGHT, TITLE AND INTEREST of the Reading Company, whether now held or hereafter acquired, in or to any and all other shares of stock of any of the companies above enumerated in Subdivision Fifth.

All other property of Reading Company as acquired by

SEVENTH. ALL STOCKS, BONDS, CERTIFICATES of indebtedness, claims and other property of every name and nature, now owned or hereafter acquired by the Reading Company which

by any of the provisions of this indenture, it is required to pledge, assign or transfer to the Trustee. provisions of this mortgage.

EIGHTH. ALL PROPERTY OF EVERY NAME and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Reading Company or by any one in its behalf to the Trustee, which is hereby authorized to receive any property, at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of bonds issued or to be issued hereunder, and to hold and apply any and all such property subject to the terms hereof. All other property hereafter transferred to Trustee hereunder by Reading Company or by any one in its behalf.

NINTH. ALL ROLLING STOCK and EQUIPMENT of every description, including steam colliers, vessels, canalboats and barges (whether or not above specifically mentioned), now owned or hereafter acquired by the Reading Company; and All equipment and marine equipment now owned or hereafter acquired.

TENTH. ALL ESTATES, LANDS, PROPERTIES, rights, privileges and franchises, real, personal or mixed, hereafter acquired by the Reading Company, as appurtenant or incidental to, or in replacement of or substitution for, any of the mortgaged premises above described. All appurtenances to mortgaged premises.

To have and to hold, the premises, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds hereby conveyed and assigned, or intended to be conveyed or assigned, by the Reading Company, unto the Trustee, its successor or successors and assigns forever, but upon the trusts hereinafter declared: Habendum in Trust.

And,

(2) **The Coal Company,** party of the second part, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey,

confirm, assign, transfer and set over, unto THE TRUSTEE, party of the third part, its successors and assigns forever:

Properties mortgaged by Coal Company.

ALL AND SINGULAR the following estates, lands, leaseholds, properties, rights, privileges and franchises, and bonds and shares of capital stock, viz.:

All property acquired under deed of 18 November, 1896, from Coster & Stetson.

ELEVENTH. ALL AND SINGULAR the coal lands, iron-ore lands, and other real estate, and also all railroads and all branches, extensions, sidings and turnouts of any railroad, belonging to said The Philadelphia and Reading Coal and Iron Company, or now in any manner acquired or held by or for its benefit or in trust for it; and also all lands, mines, collieries, breakers, engines, workshops, machinery, offices, buildings, improvements, tenements and hereditaments by the said Coal Company owned, or in any manner acquired by it or for its benefit or in trust for it; and all yards, depots and wharves, including all right, title and interest of the said Coal Company or the Receivers thereof in such yards, depots and wharves; and all locomotives, tenders, coal cars and carriages and all other engines, cars, rolling stock, tools, implements, horses, mules and materials; and also all estate, right, title, interest, property, claim and demand of every nature and kind whatsoever of the Coal Company in such property; including all property of every kind specified in certain deeds of conveyance dated November 18, 1896, by Charles H. Coster and wife and Francis Lynde Stetson and wife to the Coal Company, reference being hereby made to the said several deeds for the further specification and identification of such property hereby granted and conveyed, or intended so to be;

TWELFTH. THE FOLLOWING BONDS, to be delivered to the Trustee as hereinafter provided:

	Par Value.
Preston Coal and Improvement 7% Mortgage Bonds	$1,087,000 00
Tremont Coal Co. 6% Mortgage Bonds	900,000 00
Mammoth Vein Coal and Iron Co. 8% Mortgage Bonds	209,000 00

Bonds of other Coal Companies.

THIRTEENTH. THE FOLLOWING SHARES OF CAPITAL STOCK now belonging to the Coal Company, for which proper certificates are to be transferred either by the Coal Company or by the record holder of the certificates for such shares to the Trustee as hereinafter provided:

Stock of other Coal Companies.

	Shares.	Par Value.
The Preston Coal & Improvement Co	56,647	$2,832,350 00
The Fulton Coal Company	63,507	317,535 00
The Locust Gap Improvement Co	52,492	524,920 00
The Tremont Coal Company	118,314	2,957,850 00
The Mammoth Vein Coal & Iron Company	60,386	603,860 00
The Delaware Coal Company	5,183	259,150 00

FOURTEENTH. ALL RIGHT, TITLE AND INTEREST of the Coal Company, whether now held or hereafter acquired, in or to any and all other shares of stock of any of the Companies above enumerated in Section Thirteenth.

All stock of such other Coal Companies hereafter acquired.

FIFTEENTH. ALL other property connected with, or in any way appurtenant to, the business of the said Coal Company, whether such property be now held or hereafter acquired.

All appurtenances to mortgaged premises.

SIXTEENTH. ALL STOCKS, BONDS, certificates of indebtedness, claims and other property of every name and nature, now owned or hereafter acquired by the Coal Company which, by any of the provisions of this indenture, it is required to pledge, assign or transfer to the Trustee; and

All other property of Coal Company as required by provisions of this mortgage.

SEVENTEENTH. ALL PROPERTY OF EVERY NAME and nature from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Coal Company or by any one in its behalf to the

All other property hereafter transfer to Trustee by Coal Com-

pany or by any one in its behalf.

Trustee, which is hereby authorized to receive any property, at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of the bonds issued or to be issued hereunder, and to hold and apply any and all such property subject to the terms hereof.

Habendum in Trust.

TO HAVE AND TO HOLD the premises, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds hereby conveyed and assigned, or intended so to be, by the Coal Company, unto the Trustee, its successor or successors and assigns forever, but upon the trusts hereinafter declared.

Subject to certain undisturbed mortgages of P. & R. R. R. Co. and P. & R. C. & I. Co.

Subject, as to certain portions of the property hereby mortgaged and conveyed, to the herein recited mortgages of said The Philadelphia and Reading Railroad Company and said The Philadelphia and Reading Coal and Iron Company so far as such mortgages respectively cover such property; and

Subject, also, to all obligations incurred by Coster or Stetson or J. P. Morgan & Co.

Subject, as to any and all of the property hereby granted and conveyed, to all the liabilities, liens, charges and obligations, of every name and nature, reserved by or contained in the several deeds and transfers of any such property to the Reading Company or to the Coal Company, respectively, by Charles H. Coster and Francis Lynde Stetson or J. P. Morgan & Co., Managers, or in the several agreements mentioned in said deeds and transfers, as a consideration or condition thereof:

Habendum in Trust for bondholders.

But, as to all property hereby or hereunder conveyed or pledged, in trust nevertheless, for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued and to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest obligations, when payable, and the performance of, and compliance with,

the covenants and conditions of this indenture; without preference, priority or distinction as to lien or otherwise of any one bond over any other bond by reason of priority in the issue or negotiation thereof, so that each and every bond issued and to be issued as aforesaid, shall have the same right, lien and privilege under and by this indenture, and so that the principal and interest of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby, as if all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security of this indenture shall take effect from the day of the date hereof without regard to the date of actual issue, sale or disposition of said bonds as though, upon such day, all of said bonds were actually issued, sold and delivered to, and in the hands of, innocent holders for value.

AND IT IS HEREBY EXPRESSLY COVENANTED that all such bonds and the coupons for interest thereon are to be issued, certified, and delivered, and that the mortgaged premises are to be held by the Trustee subject to the further covenants, conditions, uses and trusts hereinafter set forth; and it is covenanted between the parties hereto as follows, viz.:

ARTICLE ONE.

Certification of Bonds.

ISSUE AND CERTIFICATION OF BONDS.

SECTION 1. All bonds to be secured hereby shall, from time to time, be executed and delivered by the Companies to the Trustee for certification, and thereupon the Trustee shall certify and deliver the same as provided in this Article, and not otherwise. The aggregate amount of bonds issued and outstanding under this indenture at any one time shall never exceed the principal sum of **$135,000,000.**

Total authorized issue limited to $135,000,000

Only such bonds as shall bear thereon endorsed the Trustee's certificate by it duly executed shall be secured by this indenture, or shall be entitled to any line or benefit hereunder; and every such certificate of the Trustee upon any bond executed in the behalf of the Companies shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trust hereby created. On request of the Companies, such certificates shall be made and bonds shall be delivered hereunder in advance of registration or record of this indenture; but the Companies shall cause record of this indenture as a mortgage upon real estate, and upon boats and marine equipment, to be made with all convenient speed.

Bonds and Stock enumerated in Subd. 4 & 5, pages 14–16 to be transferred to Trustee immediately; excepting certain to be transferred when released from pledge.

The bonds and the certificates for shares specifically enumerated in Subdivisions Fourth and Fifth of the granting clauses hereof as by the Reading Company to be transferred to the Trustee hereunder, shall, prior to the certification of any bonds hereunder, be assigned and delivered to, and pledged with, the Trustee under this indenture; excepting, however, $200,000 par value of the bonds of the Philadelphia, Harrisburg and Pittsburgh Railroad Company, of which $100,000 are held as security for the Barge loan of The Philadelphia and Reading Railroad Company, and $100,000 for the Coal Storage loan of the Receivers of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company; $500,000 Improvement Mortgage bonds of the Catawissa Railroad Company which are held by

the City of Philadelphia as part security for the bond of The Philadelphia and Reading Railroad Company filed in connection with the construction of the subway; $8,497,500 par value of the stock of the Philadelphia and Reading Terminal Company, which is held as security for the so-called "Terminal" loan; and $498,950 par value of the stock of the Philadelphia and Frankford Railroad Company, which is held under an agreement dated January 29, 1894, between The Philadelphia and Reading Railroad Company and others and Geroge H. Earle, Jr., and others, Committee, &c. These bonds and stocks shall respectively be delivered to and pledged with the Trustee immediately when and as released from the respective pledges or agreements under which they are now severally held.

Certain shares enumerated on p. 19 to be transferred immediately to Trustee.

Of the shares specifically enumerated in the granting clauses hereof as by the Coal Company transferred to the Trustee hereunder, proper certificates for

4,042 shares of the Locust Gap Improvement Company;
13,916 shares of the Mammoth Vein Coal and Iron Company;
467 shares of the Delaware Coal Company;
3,835 shares of the Fulton Coal Company;
116 shares of the Tremont Coal Company;

shall be delivered to the Trustee prior to the certification of any bonds hereunder. The certificates for the remaining shares so enumerated shall be delivered to the Trustee immediately upon their release from the existing liens of The Philadelphia and Reading Railroad Company. The bonds so enumerated shall be delivered to the Trustee immediately upon their release from the lien of the Ten Year sinking fund loan of The Philadelphia and Reading Railroad Company, for which they are now held.

Other shares and bonds to be transferred when released from existing liens.

Before certifying or delivering any coupon bond hereby secured, the Trustee shall cut off and cancel all coupons thereof then matured; and the Trustee shall not certify or deliver any registered bond bearing interest from any date more than six months prior to such certification or delivery.

Over-due coupons to be cancelled.

$50,369,000 to be delivered immediately to J. P. Morgan & Co.

SEC. 2. Of the bonds authorized to be issued under and secured by this indenture, bonds to the amount of **fifty million three hundred and sixty-nine thousand dollers ($50,369,000),** immediately upon the execution or delivery hereof, or as soon as may be thereafter, shall by the Trustee be certified and delivered to the firm of J. P. Morgan & Co., or their survivors or successors, as Reorganization Managers, without accountability by said firm, or such survivors or successors, for the disposition or use thereof.

$64,631,000 to be reserved to take up "outstanding old bonds."

SEC. 3. Of the remainder of such authorized issue of bonds, there shall be reserved bonds to the amount of **sixty-four million six hundred and thirty-one thousand dollars (64,631,000),** for the purpose of providing for the acquisition by purchase or exchange, or for the redemption, as hereinafter provided, of the following bonds and ground rents (hereinafter called "outstanding old bonds"), viz.:

Bonds of The Philadelphia and Reading Railroad Company, now outstanding for the several following principal sums and generally or technically known as:

Prior Mortgage Bonds	$5,241,700
Consolidated Mortgage Bonds of 1871-1911	18,811,000
Improvement Mortgage Bonds of 1873-1897	9,364,000
Consolidated Mortgage Bonds of 1882, 1st series	5,767,042
Consolidated Mortgage Bonds of 1883, 2d series	1,535
Philadelphia and Reading Terminal Bonds	8,500,000
Ten Year Sinking Fund Bonds of 1892	1,774,000
Delaware River Terminal Bonds and Delaware River Terminal Extension Bonds	1,509,000
Ground rents and bonds of the Philadelphia and Reading Railroad Company secured by mortgage on Real Estate:	
Of which there are outstanding ground rents and bonds for the principal sum of	$1,612,063
Bonds of the Philadelphia & Reading Coal & Iron Co., generally known as Divisional Bonds:	
Of which upon January 1st, 1897, there were outstanding bonds (as hereinbefore recited) for the principal sum of	$12,050,606
	$64,630,946
or say	$64,631,000

The said $64,631,000 of bonds hereby secured and reserved for the acquisition, by purchase or exchange, or for the redemption, of the above-described outstanding old bonds shall be issued, certified and delivered, from time to time, when authorized by resolutions of the Board of Directors of the Reading Company, as follows and not otherwise, viz.: Conditions of issue of $64,631,000 bonds reserved to take up "outstanding old bonds."

(*a*) Whenever the Reading Company shall tender or cause to be tendered any of said outstanding old bonds (theretofore acquired by the Reading Company either by purchase, payment or otherwise), together with all unmatured interest obligations thereunto belonging, the Trustee hereunder shall receive the same, and in exchange therefor shall certify and deliver to the Reading Company, or upon its order, a like amount of the bonds hereby secured. Issue in exchange for "outstanding old bonds."

(*b*) Whenever the Reading Company, on or after the maturity of any such outstanding old bonds, or on or after a date eight months prior to the maturity of any such outstanding old bonds, shall tender or cause to be tendered, cash sufficient to purchase or to pay the same, or any part thereof, at par (and shall also provide to the satisfaction of the Trustee for any interest due upon such bonds or accruing before their maturity), the Trustee shall receive such cash, and in consideration thereof shall certify and deliver to the Reading Company or upon its order an equivalent amount at par of the said bonds hereby secured and reserved. Sale to purchase or to pay "outstanding old bonds."

All cash received by the Trustee under this subdivision of this Section shall by it be held and applied to the purchase or payment at par of an equivalent amount of the outstanding old bonds then unpaid, for the purchase or payment of which such cash shall have been deposited.

(*c*) Every outstanding old bond received by the Trustee under the foregoing provisions of this Section, unless such bond shall have been theretofore canceled pursuant to any provision of this Section, shall by it be stamped with the words "Not negotiable, but held in trust for "Outstanding Old Bonds" when received to be stamped.

"the purposes declared in the Mortgage of the Reading "Company and The Philadelphia and Reading Coal and Iron "Company, dated January 5th, 1897," and shall be held by the Trustee as purchaser, and, so far as may be, without extinguishment or impairment of lien, as additional security for the payment of the bonds hereby secured until called for payment under any provision of the mortgage securing such bond; but nevertheless the Trustee may, and upon demand of the Companies shall, cancel and surrender all of the outstanding old bonds of any issue by it held hereunder, upon receiving in lieu thereof the entire collateral or property then held as security for all the bonds of such issue, and immediately thereon the collateral or property so received by the Trustee shall become subject to the lien and to the provisions of this indenture.

"Outstanding old bonds" when acquired to be kept alive as additional security for the bonds secured by this mortgage.

The Companies shall provide and maintain, or cause to be provided and maintained, books wherein shall be registered as the property of the Trustee each and every such outstanding old bond so received by the Trustee; and except as herein expressly provided no such outstanding old bond shall be canceled, unless, at time of surrender, the holder thereof shall require cancellation as a condition of surrender, or unless, by resolution of its Board of Directors, before the delivery of such bond to the Trustee, the Reading Company shall determine that such cancellation is expedient; such determination to be within the absolute discretion of said Board. At any time, the Trustee may surrender any canceled outstanding old bond received or held by it pursuant to this section, to the trustee or the mortgagee, under any mortgage securing such bond, upon obtaining from such trustee or mortgagee suitable acknowledgment of such surrender; and thereafter such acknowledgment shall be held by the Trustee hereunder in lieu of the bond so surrendered.

"Outstanding old bonds" when acquired to be registered as property of Trustee without cancellation except as required.

Whenever through the operation of any sinking fund created either by any mortgage securing any of said outstanding

old bonds, or by any contract or other arrangement satisfactory to the Trustee hereunder, any of said outstanding old bonds, with all unmatured interest obligations thereto belonging, shall, after the date of this indenture, be paid or otherwise satisfied and canceled, or acquired for such sinking fund, then for each $1,000 of such bonds so paid or otherwise satisfied, and canceled, or so acquired for such sinking fund, the Trustee shall certify and deliver to the Reading Company or upon its order $1,000 par value of the said bonds hereby secured for each $1,000 of principal of such outstanding old bonds so paid or satisfied and canceled, or so acquired.

Reading Company entitled to receive bonds hereby secured to an amount equal to that of "outstanding old bonds" satisfied by sinking fund provisions upon sufficient proof of such satisfaction.

Certificates signed by the President, Treasurer, or Comptroller of the Reading Company, showing the amounts of outstanding old bonds, at any time or times subsequent to the date hereof, through the operation of such sinking fund, paid or otherwise satisfied, and canceled, or acquired, and any other facts necessary for any determination by the Trustee for any purpose of this Section, may be received by the Trustee as conclusive evidence of any of such facts therein set forth for the purposes of this Section, but the Trustee, in its discretion, may make such further inquiries and require such further evidence as to it may seem reasonable.

SEC. 4. The remainder of the authorized issue hereunder, amounting to **$20,000,000** of said bonds (except such portion of such remainder as shall be called for and certified and delivered prior to January 1st, 1898, as provided in paragraph (*6*) of this Section), shall be reserved, to be executed, and to be certified by the Trustee, not immediately, but only when and as called for by resolution of the Board of Directors of the Reading Company as next hereinafter provided, for the following purposes, or some one or more of them, viz.:

$20,000,000 bonds reserved for new acquisitions and betterments.

(*a*) For the acquisition of additional shares of stock of the Philadelphia and Reading Railway Company, and of additional

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(*a*) For acquisition of stocks and bonds of P. & R. Ry. Co.

bonds of said company to be issued under its mortgage dated November 18, 1896, *provided* that in every case of any such acquisition the par value of such bonds so acquired shall be at least equal to that of such shares so acquired; and that the aggregate par value of such bonds and shares so acquired shall be equal to that of the bonds hereby secured, used for the acquisition of such bonds and shares of the Philadelphia and Reading Railway Company.

(*b*) For acquisition or betterment of property appurtenant to those of Reading Company or of Coal Company subject to this mortgage, or as specified of certain other companies.

(*b*) For the construction or acquisition, on and after January 1st, 1897, of railway lines, extensions, terminal properties or rolling stock or for the construction or acquisition of other property on or after that date; or for the construction of betterments, on or after that date; all such construction, or betterments, or property acquired, to be upon, along, or appurtenant to the properties of the Reading Company at the time of such use subject to the lien of this indenture, or upon, along or appurtenant to lines of railway or other properties of the Coal Company at the time of such use subject to the lien of this indenture, or upon, along or appurtenant to lines of railway or terminal properties of some one or more of the other companies mentioned in Subdivision Fifth of the granting clauses hereof under the heading "I." or "II." or of some other company of whose capital stock more than one-half, at the time of such use, shall be pledged hereunder, it being intended that such lines, extensions or terminal properties, or other property may be constructed or acquired by and in the name of the Companies, or either of them, or by or for account of any such other company; or for the acquisition on or after January 1st, 1897, of shares, bonds or other obligations of any company owning any such line, extension, terminal property, rolling stock or other property (provided that any such acquisition of stock, either by itself, or in connection with the stock of such company previously pledged hereunder, shall constitute more than one-half of the total stock of such company, and provided further that, after the pledge of more than

one-half of the capital stock of any such company, no bonds, shares or other obligations of such company thereafter issued shall be acquired hereunder unless a sum equal to the entire proceeds of the bonds used therefor shall have been applied by such company to the acquisition or construction of new property or betterments); or

(c) To reimburse the Reading Company for outlays or advances by it made for, or to promote, any construction or acquisition made pursuant to (*a*) or (*b*) hereof on or subsequent to January 1st, 1897. (c) To reimburse Reading Company for such outlays.

The bonds reserved under this Section shall by the Trustee be certified and delivered to the Reading Company, or upon its order, as follows, and not otherwise, viz.: Conditions of Certification.

(*1*) Such bonds shall be certified and delivered by the Trustee from time to time only as and when it shall receive a copy of a resolution of the Board of Directors of the Reading Company, certified by its Secretary or Assistant Secretary, calling for the certification and delivery of such bonds, and stating that such bonds or their proceeds will be set aside separate and apart from all other assets and funds of the Reading Company, and will be used only for purposes authorized by this Section. Resolution of Reading Co. Directors required.

(*2*) On January 1, 1897, or on any day thereafter, prior to December 31, 1897, bonds to such amount as shall be called for in such resolution, but not exceeding in the aggregate $1,500,000, par value, shall be so certified and delivered. $1,500,000 to be certified in 1897.

(*3*) In each calendar year after December 31, 1897, there shall be so certified and delivered such additional amount of such bonds, not exceeding $1,500,000 par value in any calendar year, as, from time to time, shall be called for in similar resolutions; but in every instance, before certifying and delivering any of the bonds reserved under this Section (except Not over $1,500,000 per annum to be certified, and this not assimulative.

Conditions of annual issues of reserved bonds after 1897.

the $1,500,000 deliverable in the year 1897), the Trustee shall require the Reading Company to furnish, in addition to such resolutions of its Board of Directors, the verified certificate or certificates of some person or persons, stating as of his or their own knowledge:

Verified certificate as to specified use of all bonds certified and delivered under this section since last prior delivery hereunder.

(*a*) that all bonds certified and delivered under this Section since the last previous delivery under this Section, and the proceeds of all such bonds, have been used for such purposes, or for some one or more of them, or to reimburse the Reading Company as above provided, specifically indicating every such acquisition or construction of any railroad, track, structure, betterment, rolling stock or other property, and every such acquisition of bonds or stock of the Philadelphia and Reading Railway Company and every such acquisition of stock, bonds or other obligations of any other company owning any railroad or other property (which stock, bonds or other obligations shall be acquired only when a majority of the total capital stock of such company shall be thereby pledged as aforesaid unless previously thereto such majority shall have been acquired and pledged hereunder) and also stating in detail the amounts of bonds, or proceeds of bonds, used or expended for each and every such purpose, and whether such acquisition was by or in the name of the Companies or either of them, or by or for account of any other company as herein authorized; and also that no acquisition, construction, or expenditure stated in such certificate was stated in any previous certificate;

Only fair value to be paid in bonds.

(*b*) that the price paid in such bonds, or their proceeds, for any such construction, or acquisition (other than for bonds or shares of the Philadelphia and Reading Railway Company, as aforesaid), was not in excess of the fair value of the work done or property

acquired, and that the bonds included in such verified certificate were sold, disposed of, or otherwise accounted for, at not less than their fair market value at the time of such sale, disposition or accounting.

Bonds to be disposed of only at fair market value.

(c) In case of the acquisition hereunder of any new property in behalf of the Companies, or either of them (other than stocks, bonds or other obligations), every such verified certificate also shall state whether such property so acquired is known, or believed, to be subject to any lien or charge prior to this indenture, other than (1) the mortgages securing outstanding old bonds hereinbefore mentioned (or mortgages created in renewal or extension of any such existing mortgages), (2) the mortgage of the Coal Company securing its bond for $30,000,000 which is pledged as collateral security for some of said outstanding old bonds, (3) mortgage bonds, or other liens, or charges, held by the Trustee, or in respect of which, as hereinafter provided, bonds shall have been reserved hereunder, (4) mortgages now existing on the property of any company above mentioned under the headings "I." and "II." in Subdivision Fifth of the granting clauses hereof (or mortgages created in renewal or extension of any such existing mortgages), (5) any undetermined liens or charges incidental to construction, (6) ordinary operating accounts; and such verified certificates shall specify the amount of any such prior lien or charge (other than as aforesaid) known or believed to exist; and in case of the acquisition of any shares of the capital stock, bonds or other obligations of any company (except shares or bonds of the Philadelphia and Reading Railway Company) by the use of such bonds or their proceeds, every such verified certificate shall state whether the property of such company is known or believed to be subject to any lien or charge, and

Property acquired by reserved bonds except as specified to be free from prior charges except as specified.

whether such company is known or believed to have any indebtedness, except ordinary operating accounts, and except also, indebtedness to the Companies, and liens, charges and indebtedness held by the Trustee hereunder, or in respect of which bonds shall have been reserved hereunder, and excepting also mortgages now existing on the property of any company mentioned, as aforesaid, under the headings "I." and "II." in Subdivision Fifth of the granting clauses hereof, or mortgages created in extension or renewal of any such existing mortgages, such verified certificate in each instance specifying the amount of any such debt, lien or charge.

Any such verified certificate under this Section may state any other facts pertaining to the right to certify and deliver bonds hereunder.

Reserved Bonds not to be used to acquire property (with specified exceptions) in any one year, upon which prior liens or charges shall in aggregate exceed $2,000,000.

(4) The Companies shall not by use of any such bonds reserved under this Section, or their proceeds, in any one calendar year acquire or construct new property, or acquire shares in, or bonds or other obligations of, any other company (except shares or bonds of the Philadelphia and Reading Railway Company), if the amount of the mortgage or other liens and charges, prior to this indenture, upon such new property acquired or constructed in that year, and any and all indebtedness of such other Company or Companies (except the Philadelphia and Reading Railway Company) whose shares or bonds or other obligations shall be so acquired, shall in the aggregate exceed $2,000,000—excepting, however, the mortgages securing outstanding bonds of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, or either of them (or mortgages created in renewal or extension of any such existing mortgages), the mortgage of the Coal Company for $30,000,000 which is held as collateral as afore-

said, the mortgages now existing on the property of any company mentioned as aforesaid under the headings "I." and "II." in Subdivision Fifth of the granting clauses hereof (or mortgages created in renewal or extension of any such existing mortgages), and any mortgage bonds, or other liens, charges or indebtedness held by the Trustee hereunder, or in respect of which, as hereinafter provided, bonds shall have been reserved in any previous calendar year, or years, and excepting also any undetermined liens or charges incidental to construction, any indebtedness of any such other company to the Companies, or either of them, and ordinary operating accounts.

Restrictions upon use of reserved bonds, for acquisition of property subject to liens, or of stock of company in debt.

In case there shall be acquired or constructed by use of such bonds, or their proceeds, any property subject to any such certified lien, charge or indebtedness, or in case by such use there shall be acquired any shares in, or bonds or other obligations of, a company (other than the Philadelphia and Reading Railway Company) certified as aforesaid to be indebted (not including, however, liens, charges and indebtedness of the classes above excepted), then during the continuance of such lien, charge or indebtedness, there shall be set apart out of the bonds reserved under this Section an amount at par equivalent to such certified liens, charges or indebtedness; and the bonds so set apart shall be taken from the $1,500,000 bonds under this Section deliverable in such calendar year, or in the next two succeeding calendar years, as may be agreed between the Reading Company and the Trustee. Thereafter the bonds so set apart shall, from time to time, be executed and certified, upon the order of the Reading Company, and delivered and used for the retirement or acquisition of such certified liens, charges or indebtedness in amounts equivalent at least to the par amount of the bonds certified and delivered therefor, and all the liens, charges or indebtedness so retired or acquired shall be canceled or, if practicable, shall be assigned to and held by the Trustee in such manner as, in its judgment, shall best protect the holders of the bonds hereby secured.

Certificates for reserved bonds to be accompanied by official Statement.

(5) Every such verified certificate, unless signed (1) by the President, or one of the Vice-Presidents, and (2) by the Comptroller, or Auditor, or Treasurer, of the Reading Company, shall be accompanied by a written statement of one of the officers first above designated and one of the officers secondly above designated of the Reading Company that they believe such certificate to be true, and that such bonds have not been used and the expenditures therein certified have not been made for ordinary maintenance of the property owned, leased, or in any way controlled by either of the Companies or for replacements or other purposes ordinarily treated by similar companies, or companies owning similar properties, as a part of their operating expenses. Together with such statements and verified certificates, there shall be delivered to the Trustee all bonds and certificates for all shares of stock so acquired, and such further instruments and conveyances as may be necessary to vest in the Trustee all new property so acquired, so far as the same shall have been acquired by or for the Companies, or either of them, and, so far as practicable, any and all other liens, charges or indebtedness taken up or acquired with the said bonds or their proceeds; and also the written opinion of counsel of the Reading Company to the effect that such instruments and conveyances are sufficient for that purpose, or that no instrument or conveyance is necessary. The certificates for all shares of stock so acquired shall be duly transferred into the name of the Trustee, and, if practicable, any bonds so acquired shall be transferred in like manner, or, if not susceptible of such transfer, shall be plainly endorsed as the property of the Trustee hereunder. Such resolutions, statements, verified certificates and opinion shall be deemed and taken as plenary authority to the said Trustee for its certification of such bonds under the foregoing provisions of this Article.

and also by opinion of Reading Company Counsel.

Stock and Bonds acquired by reserved bonds to be vested in Trustee.

(6) Except to retire or acquire liens, charges or indebtedness for which bonds so used shall have been reserved, as herein-

before provided, and except as provided further on in this paragraph, bonds shall not be issued or certified under this Section in excess of an aggregate amount of $1,500,000 in any one calendar year; *provided*, however, and the appropriation of such $20,000,000 bonds in and by this Section 4 is in all respects subject to the condition, hereby expressly declared, that if the before-mentioned J. P. Morgan & Co., or their survivors or successors, as such Reorganization Managers, from time to time, on or before January 1, 1898, by writing addressed to the Companies and to the Trustee, shall require the delivery to them, or upon their order or orders, of the whole or any part of $2,000,000 of said bonds, the Companies shall execute, and the Trustee shall certify and deliver to them, or upon their order or orders, bonds to the amount specified in such several requisitions to an aggregate amount not exceeding $2,000,000 of such bonds; it being intended that any such delivery shall be in addition to any deliveries under the foregoing provisions of this article, and shall not impair the preceding provision for delivery of the residue of the $20,000,000 of bonds to the Reading Company at various dates subsequent to December 31st, 1896.

Except as specified, not more than $1,500,000 reserved bonds to be issued hereunder in any one year.

Nevertheless, $2,000,000 reserved bonds may at any time in 1897 be issued to J. P. Morgan & Co. as Reorganization Managers.

SEC. 5. Whenever any coupon bond or bonds amounting to $1,000 or to any multiple of $1,000, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds, the Companies shall issue, and the Trustee shall certify and deliver, in exchange for such coupon bond or bonds, a like amount of registered bonds, without coupons. Such registered bonds shall be for $500, $1,000, $5,000 or $10,000, and shall bear interest at the same rate as the surrendered coupon bonds, and from the date of the last matured coupon thereof. In every case of such exchange the Trustee forthwith shall cancel the surrendered bond or bonds and coupons, and shall deliver the same to the Reading Company.

Issue of Registered bonds.

Whenever any such registered bond shall be surrendered for transfer, the Companies shall issue, and the Trustee shall certify and deliver, to the transferee, upon surrender and cancellation of the bond or bonds transferred, a like amount of new registered bonds; but no registered bond may be converted into a coupon bond.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds without coupons, the Companies, at their option, may make a charge not exceeding fifty cents for each new registered bond issued in exchange for any surrendered bond or bonds; but no charge shall be made for registration of the principal of coupon bonds.

Issues in lieu of bonds mutilated or destroyed.

In case any coupon bond issued hereunder, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Companies, in their discretion, may issue, and the Trustee thereupon shall certify and deliver, a new bond of like tenor and date, bearing the same serial number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the registered bond, or in lieu of, and substitution for, the coupon bond and its coupons, or the registered bond, so destroyed, upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons, or of such registered bond, and upon receipt also of satisfactory indemnity.

No rights conferred by this Indenture except upon the parties hereto and the bondholders.

SEC. 6. Nothing in this Article, or in any other Article, of this indenture expressed or implied, is intended, or shall be construed, to confer upon any person or corporation, other than the parties hereto and the holders of bonds secured by this indenture, any legal or equitable right, remedy or claim under or in respect of this indenture, or any covenant, condition or stipulation thereof; all its covenants, conditions and stipulations being intended to be, and being for the sole and exclusive benefit of the parties hereto and of the holders of bonds hereby secured.

Neither shall any covenant, condition, stipulation, penalty, right or remedy provided in or created by this indenture, apply to or become operative in respect, or for the benefit, of any of the Delaware River Terminal Bonds, or of the Delaware River Terminal Extension Bonds, mentioned in Section 3 of this Article One, unless or until the Reading Company, by writing addressed and delivered to the Trustee, shall withdraw and revoke this restriction.

No right conferred in respect of Delaware River Bonds.

ARTICLE TWO.

Covenants of Reading Company and Coal Company.

THE COMPANIES JOINTLY AND SEVERALLY COVENANT AS FOLLOWS:

SECTION 1. They will well, duly and punctually pay, or cause to be paid, to every holder of any bond issued and secured hereunder, the principal and interest accruing thereon, at the dates and place and in the manner mentioned in such bonds, and in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States, or any State or Municipality thereof, which the Companies, or either of them, may be required to pay or to retain therefrom under or by reason of any present or future law. When and as paid, all coupons shall forthwith be canceled.

1. To pay principal and interest of bonds, free from tax, and to cancel paid coupons.

SEC. 2. All property of every kind, and all interest therein when and as and to the extent hereafter acquired, as above provided, out of bonds, or the proceeds of bonds, secured by this indenture, or out of other funds received pursuant to any provision hereof, immediately upon, and subject to the terms and conditions of, such acquisition, and without any further conveyance or assignment, shall become and be subject to the lien of this indenture as fully and completely as though now

2. To subject to lien of this mortgage new property acquired hereunder.

owned by the Companies, or either of them, and expressly and specifically conveyed by, and embraced in, the several granting clauses of this indenture; but at any and all times the Companies, and each of them, severally, will execute and deliver any and all such further assurances or conveyances thereof as the Trustee may reasonably direct or require, for the purpose of expressly and specifically subjecting the same to the lien of this indenture.

3. To execute further assurance

SEC. 3. Whenever demanded by the Trustee, the Companies, and each of them, severally and respectively, will grant, convey, confirm, assign, transfer and set over unto the Trustee, all real and personal estate, corporate rights and franchises which, in any way or manner, they, or either of them, shall acquire as incidental or appurtenant to, or for use upon, any property mortgaged hereunder, or to or upon the property of any company of which any stocks or bonds are or shall be pledged hereunder; and severally and respectively they will also do, execute, acknowledge and deliver, and cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, conveyances and transfers, and assurances in the law, for better assuring, conveying and confirming unto the Trustee all and singular the hereditaments and premises, estates and property hereby conveyed, or intended so to be, or which they, or either of them, have herein covenanted and agreed hereafter to convey to the Trustee, as the Trustee shall reasonably require for better accomplishing the provisions and purposes of this indenture, and for securing payment of the principal and interest of the bonds intended to be hereby secured; and whenever demanded by the Trustee, the Companies will endeavor to procure from all companies, of which the capital stock or the bonds or any part of either shall be pledged hereunder, all conveyances or assurances in law necessary to bring under the lien of this indenture any and all property connected with or incidental or appurtenant to the

property of any such company, constructed or acquired by use of any bonds reserved under Section 4 of Article One, or of any other funds received pursuant to any provision hereof.

But nothing expressed or implied in this indenture is intended, or shall be construed, to limit the right or power of the Companies, or of either of them, hereby expressly reserved, by the use of their credit or in any manner, except by the use of such reserved bonds, or funds received pursuant to any provision hereof, to construct or to acquire other property of any kind, or interests therein, free from the lien hereof.

4. To provide for registration.

SEC. 4. The Companies will, at an office or agency to be maintained by them in the City of New York, keep a sufficient register or registers of bonds issued hereunder, which registers at all reasonable times shall be open to the inspection of the Trustee; and, upon presentation for such purpose, they will, under such reasonable regulations as they may prescribe, register therein any coupon bonds and any bonds without coupons issued under the provisions hereof. As to all bonds so registered, the person in whose name the same shall be registered shall for all purposes of this indenture be deemed and regarded as the owner thereof, and thereafter payment of or on account of the principal of such bond, if it be a coupon bond, and of the principal and interest, if it be a registered bond without coupons, shall be made only to such registered holder or upon his order; but such registration may be changed as hereinafter provided. All such payments so made shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

Registered holder to be deemed the owner.

Upon presentation of any such registered coupon bond, with a written power to transfer the same, executed by the registered holder, such bond shall be transferred upon such register, and thereafter the transferee or transferees of such bond upon such register shall be held to be the owner or owners thereof, and from time to time such transfers may be

Provisions as to registered bonds.

made as shall be so directed by the registered holder of any such bond for the time being. The registered holder of any such registered coupon bond shall have the right also to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal thereof shall be payable to any person presenting the same.

Any holder of a coupon bond registered to bearer may cause such bond to be registered in the name of such holder with the same effect as a first registration thereof; and successive registrations and transfers to bearer as aforesaid may be made from time to time as desired.

No registration of any coupon bond shall restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery merely.

Any registered bond without coupons may be transferred by instrument in writing executed by the registered holder upon surrender of the bond and payment of the charge for such transfer, in which case a like amount of new registered bonds will be issued to the transferee as provided in Section 5 of Article One hereof.

5. To pay interest on "outstanding old bonds" and to observe the covenants thereof.

SEC. 5. The Companies will duly, punctually and regularly pay or cause to be paid the interest on all outstanding bonds of The Philadelphia and Reading Railroad Company and of the Coal Company mentioned in Section 3 of Article One hereof until such bonds shall be paid and discharged, or shall have been acquired and pledged hereunder, and in the mean time they will observe, or will cause to observed, all the covenants, terms and conditions undertaken by or imposed upon said Railroad Company and said Coal Company respectively, by such bonds and by the several respective mortgages securing same. But nothing in this article or in any other article of this indenture is intended, or shall be construed, to require the Companies or either of them, not then being otherwise in default hereunder, to pay the principal of any such out-

Right reserved to take up or extend "outstanding old bonds."

standing bond during any period for which the same shall have been extended or renewed as next hereinafter provided; the right being hereby expressly reserved by each of the Companies severally and respectively in the discretion of their several Boards of Directors, from time to time, (1) to extend the time for the payment of the principal of any of said outstanding bonds, or (2) in substitution for any such outstanding bonds to issue new bonds of lien prior to this indenture; but not to increase the aggregate principal sum or the rate of interest of such outstanding bonds; though the principal and interest of all such new or extended bonds may be made expressly payable in gold coin of the United States of the present standard of weight and fineness; it being understood, however, that the $30,000,000 bond of the Coal Company above mentioned in Section 4 of Article One shall be extinguished and the mortgage securing the same shall be canceled, so soon as said bond shall be released from its pledge as collateral security for said outstanding old bonds, known as Consolidated Mortgage bonds of 1871–1911. Neither any action or acquiescence of the Companies in any such extension, renewal or substitution, nor any neglect by the Companies (not then being otherwise in default hereunder) to pay the principal of any such extended, renewed or substituted bond during any period for which such extension, substitution or renewal shall have been made, shall constitute a default or branch under any provision of this indenture.

Right to extend or to renew "outstanding old bonds" except as specified.

The Trustee shall, at all times, give all suitable proxies to carry out the purposes of this section.

SEC. 6. The Companies will not (except as above provided) voluntarily create or suffer to be created any lien or charge upon the mortgaged premises or any part thereof, or upon the income thereof, having priority to the lien of this indenture; and, within six months after the same shall accrue, they will pay all lawful claims and demands of mechanics,

6. Not to create or to suffer prior charges; and to pay claims given priority by law.

To discharge (except as specified) claims against underlying companies.

laborers and others, which, if unpaid, might by law be given priority to this indenture as a lien or charge upon the mortgaged premises or any part thereof, or the income thereof, and if any company, of whose capital stock the greater part now is or hereafter shall be pledged hereunder, shall create or suffer to be created any lien or charge upon its property or income, or create or suffer to be created any indebtedness, other than (1) mortgage or funded indebtedness as hereinafter permitted, (2) indebtedness of the Coal Company as hereinafter permitted, (3) indebtedness to the Companies or either of them, or (4) indebtedness for the current operating expenses of such company during a period not exceeding six months, then they, the Companies, will pay and discharge the same, or will acquire the same and transfer the same to the Trustee for the benefit of this mortgage.

May assume and discharge obligations in connection with "Subway" in Philadelphia.

Notwithstanding any contrary provision of this indenture, the Philadelphia and Reading Railway Company may assume any and all obligations of the Philadelphia and Reading Railroad Company to the City of Philadelphia in respect of the construction of the "Subway," so called, in said City, and may incur any and all further obligations to said City, necessary to procure the completion of such subway, and may effectively secure said City in respect thereof by charge upon its railroad and property or otherwise, in priority of the lien hereof.

7. To pay taxes and assessments.

SEC. 7. The Companies from time to time will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the premises hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such properties; and if any company of whose capital stock the greater part now is pledged hereunder, or hereafter shall be acquired and pledged hereunder, shall, at any time during the continuance of any such pledge, fail to pay all such taxes,

assessments and charges lawfully imposed upon the property of such company or upon the income and profits thereof, then they, the Companies, will themselves pay and discharge the same: provided that the covenants of this Section shall not require the Companies to pay any tax, assessment or charge, so long as the validity thereof is in good faith contested.

8. To maintain and replace mortgaged premises.

SEC. 8. The Companies, from time to time and at all times during the continuance of this indenture, and until the payment of all bonds issued hereunder, severally and respectively will maintain the mortgaged premises and each and every part thereof, and will replace the same and all parts thereof lost, destroyed or used up, but the mining and selling of coal by the Coal Company, without replacement, shall not be construed as a violation of this covenant.

9. To retain unencumbered control of stock of other companies pledged hereunder.

SEC. 9. Except subject to the lien hereof or as herein otherwise expressly provided, the Companies (1) will not sell, encumber or by any voluntary act part with their respective ownership of and title to any shares of stock of any company above enumerated in I. and II. of Subdivision Fifth of the granting clauses hereof, or to any shares of stock of any company which shall hereafter be pledged hereunder (if a majority of the shares of such company shall have been, or shall be, so pledged), or the equity of redemption therein or the voting power thereof; and (2) severally and respectively will hold, subject to the lien hereof, all and singular such stock of every company of whose capital stock the greater part shall have been pledged hereunder, and will exercise the voting power thereon in such manner that they shall retain in themselves the rights and powers of the holder of the greater part of the capital stock of such company; and (3) will at all times take all such action as, from time to time, may be necessary to preserve the corporate existence and corporate rights of every company of whose capital stock the greater part shall be pledged hereunder.

As to stock of other companies pledged hereunder.

As such holder of stock of any Company (excepting the Coal Company) above mentioned under the headings I. and II. of Subdivision Fifth of the granting clauses hereof, or of stock of any other company of whose stock the greater part shall at such time be pledged hereunder, neither of the Companies will, by affirmative vote, or by abstaining from voting, sanction or permit any increase of the capital stock of any such company or the creation of any so-called "floating" indebtedness of any such company (except current operating accounts for a period not at any date exceeding six months prior thereto), or (except in respect of the Coal Company) the issue or guaranty of any bonds by any such company, or the creation of any mortgage or other lien upon the railroad or property of any such company (except bonds or mortgages or other liens in extension or replacement of those now existing), unless effective provision be made that all such additional stock (or such part of such additional stock as shall be proportionate to the part of such entire capital stock previously pledged hereunder), and (except as to the Coal Company) that any such indebtedness and the evidences thereof, and any such bonds issued or guaranteed, and any such mortgage or other lien, immediately upon the issue or creation thereof, shall be delivered to and pledged with the Trustee, by it to be held subject to all the trusts of this indenture, with the same effect as if such indebtedness, bonds, mortgage or other lien and shares, had been delivered and pledged to it hereunder at the time of the making hereof; and all such additional stock shall be fully paid and non-assessable. But nothing in this article or in any other article of this indenture is intended, or shall be construed, to require any such Company (not then being otherwise in default) to pay the principal of any bond heretofore created by any such Company or now secured by mortgage upon its property during any period for which the same shall have been extended or renewed as next here-

inafter provided; the right being hereby expressly reserved by each of the parties of the first and second part hereto, severally and respectively, in the discretion of their several Boards of Directors, from time to time, to take all necessary steps (1) to procure the extension of the time for the payment of the principal of any such existing bonds, or (2) in substitution for any such existing bonds to procure the issue of new bonds by any such Company, but not to increase the aggregate principal sum or the rate of interest now charged on such property by such existing liens, though the principal and interest of all such new or extended bonds may be made expressly payable in gold coin of the United States of the present standard of weight and fineness. As to stock of other companies pledged hereunder.

Except as herein otherwise expressly provided, neither of the Companies will, by affirmative vote, or by abstaining from voting, sanction or permit any railroad company of whose capital stock the greater part shall be pledged hereunder to sell or otherwise to dispose of its railroad, or to lease the same (unless such lease be terminable hereunder by entry of the Trustee, or by sale, by the Trustee, or pursuant to judicial proceedings), except to some company of whose capital stock there shall then be held or received by the Companies or by either of them, and shall be pledged or assigned to the Trustee hereunder, an amount not proportionately less than the amount then held hereunder of the capital stock of the Company whose railroad shall be so sold or shall be otherwise disposed of, or leased.

SEC. 10. Any and all claims and indebtedness (other than bonds now or hereafter pledged or assigned to the Trustee under some provision of this indenture) which the Companies, or either of them, now hold or hereafter may acquire against any other company of whose capital stock the greater part shall have been pledged hereunder, shall be and become subject to the lien of this indenture, and if and when requested in writing by the Trustee the Companies will execute to the Trustee appropriate assignments thereof. 10. To assign to Trustee claims against such other companies.

11. To issue or use bonds only as herein authorized.

SEC. 11. The Companies will not issue, negotiate, sell or dispose of any bonds hereby secured, in any manner other than in accordance with the provisions of this indenture, and the agreements in that behalf herein contained; and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, they will well and truly apply, or cause to be applied, the same, or the proceeds thereof, to and for purposes herein prescribed, and to and for no other or different purpose.

12. Reading Company to declare dividends only after providing for a specified sinking fund equal to five cents per ton on coal mined.

SEC. 12. The Reading Company shall not, and will not, in any year declare or pay dividends upon its stock, either common or preferred, until or unless prior to, or simultaneously with, such declaration, it shall deliver to the Trustee a statement in writing under its corporate seal showing the amount of anthracite coal mined, from lands owned by the Coal Company and mortgaged hereunder, during the year next preceding the declaration of such dividend, and simultaneously shall pay to the Trustee hereunder a sum equal to five cents per ton on all coal so mined in such next preceding year, if the aggregate of dividends so declared shall be equal to or shall exceed such sum, and otherwise such lesser sum as shall be equal to the aggregate of dividends so declared.

All sums so received by the Trustee shall by it be used and applied in purchasing bonds hereby secured in such manner as to it shall seem best and at such prices as it shall deem best, but not exceeding par and accrued interest. To the extent that in the opinion of the Trustee bonds hereby secured cannot be bought on the terms herein prescribed, such bonds hereby secured may be purchased in the discretion of the Trustee and with the approval of the Reading Company at higher prices than those above fixed, or such unapplied balance shall be invested in securities in which Savings Banks at such time shall be authorized under the laws of New York to invest their funds, such securities to be held by the Trustee as a part of the trust estate hereunder; and the

Trustee is hereby authorized from time to time in its discretion and with the consent of the Reading Company to dispose of any such securities purchased by the Trustee, and to reinvest the proceeds of such sale in similar manner, or to apply the same to the purchase and cancellation as aforesaid of bonds hereby secured. Sinking fund from Coal.

All bonds hereby secured, when so purchased by the Trustee, shall be canceled.

ARTICLE THREE.

PROVISIONS CONCERNING PLEDGED BONDS AND STOCK.

Companies to receive interest, dividends, etc., unless in default.

SECTION 1. Unless (*a*) the Companies shall be in default in the payment of some interest on any bond secured by this indenture, or unless default shall be in the payment of some interest on any bond (other than bonds held by the Trustee hereunder, and except as provided in Section 6 of Article One), for the acquisition of which bonds secured hereby are reserved under Section 3 of Article One hereof, and such default shall have continued for a period of six months; or unless (*b*) the Companies shall be in default in the due and punctual payment of the principal of any bond secured hereby, or of any bond (other than bonds held by the Trustee hereunder, and except as provided in Section 6 of Article One), for the acquisition of which bonds secured hereby are reserved as aforesaid; or unless (*c*) the Companies shall be in default in the payment of any tax, assessment or other governmental charge lawfully imposed or levied upon any part of the property and premises hereby mortgaged, or the income and profits thereof, and such default shall have continued for a period of six months after written notice thereof from the Trustee or from holders of five per cent. in amount of the bonds secured hereby; or unless (*d*) the Companies shall be in default in the due performance and observance of

Companies to receive interest, dividends, etc., unless in default.

any covenant or condition of this indenture and such default shall have continued beyond the period of grace, if any, herein provided for in respect of such default, and the Trustee shall have entered or shall have elected to enter into possession under the power of entry hereinafter conferred; or unless (*e*) the Companies voluntarily shall have surrendered to the Trustee possession of the mortgaged premises as hereinafter authorized—the Trustee (except with the assent of the Companies) shall not collect or be entitled to collect the principal or interest of any bonds or other claims or indebtedness now or hereafter pledged with, or assigned to, the Trustee under this indenture; and (1) the Companies severally and respectively shall be entitled to receive all interest paid and dividends declared in respect of any bonds or stocks transferred to or pledged with the Trustee pursuant to any of the provisions of this indenture; and from time to time (subject to the covenants in respect thereof in this section contained), upon the request of the Companies, the Trustee shall deliver to them severally and respectively the coupons for such interest, in order that the Companies severally and respectively may receive payment thereof for their own use, and shall deliver to the Companies severally and respectively suitable orders in favor of the Companies severally and respectively or their respective nominee for the payment of such dividends and for the payment of such interest on registered bonds; and the Companies may collect such interest and dividends, but not by any proceeding which the Trustee shall deem to be prejudicial to the trusts hereunder; and the Trustee at once shall pay over to the Companies, severally and respectively, any such interest and dividends which may be collected or received by it; and (2) the Companies severally and respectively shall be entitled for their own use to demand, receive and collect, release and discharge, the principal or interest of any such claim against, or indebtedness (other than bonds) of, any other com-

pany pledged with the Trustee hereunder, and upon request of the Companies severally and respectively the Trustee shall execute any re-assignments or releases which may be required for that purpose.

Companies to receive interest, dividends, etc., unless in default.

If any such coupon, or if any evidence of any such claim or indebtedness, delivered to the Companies as aforesaid, shall not as aforesaid forthwith be paid and canceled, the Companies severally and respectively shall return the same to the Trustee and, in case of the payment of any such coupon, claim or indebtedness, shall upon demand of the Trustee furnish satisfactory evidence of the cancellation and extinguishment thereof.

Provided, however, and it is hereby declared and agreed that, except as herein otherwise expressly provided, (1) the Companies shall not be entitled to receive, and the Trustee shall not pay over to them, any principal of any bond pledged or assigned to the Trustee hereunder; (2) the Companies shall not be entitled to receive, and the Trustee shall not pay over, any interest on any such bond or any principal or interest of any such other claim or indebtedness which shall have been collected or paid out of the proceeds of any sale of any property covered by a mortgage securing such bonds, or out of the proceeds of the sale of any other property of the company liable upon such bonds, claims, or indebtedness, it being the intention that the Companies severally and respectively shall be entitled to receive only payments made out of the rents, revenues, income, or proceeds of operation of such properties; (3) the Companies shall not sell, assign or transfer any such coupon or right to dividend, delivered or assigned to it, or any other such claim or indebtedness, except subject to this indenture; (4) the Companies shall not collect any such coupons or other claims or indebtedness by legal proceedings or by enforcement of any security therefor, except with the assent of the Trustee, nor in any manner which the Trustee shall deem prejudicial to the trust hereunder; and (5) until actually paid or

discharged every such coupon or right to dividends and other claims and indebtedness shall in all respects remain subject to the lien of this indenture.

Principal of pledged bonds and shares when collected to be used for improvements, etc.

SEC. 2. In case any sum shall be paid to the Trustee on account of the principal of any bond pledged with the Trustee, hereunder, or in case, upon the dissolution or liquidation of any company, or out of any sale of the property of any company, any sum shall be paid to the Trustee upon any shares of stock of such company held by the Trustee hereunder, or upon any claims against or indebtedness of such company as mentioned in Section 1 of this Article, then, in every such case (unless applied as in Section 5 of this Article provided), such sum shall be received by the Trustee and shall be held, used and applied in the same manner as the proceeds of property released under Article Six hereof.

Companies unless in default to have and to exercise voting power of pledged stock.

SEC. 3. Unless (1) the Companies shall be in default, and such default being one mentioned under (*a*), (*b*) or (*c*) of Section 1 of this Article, shall have continued as therein provided, or being one mentioned under (*d*) in said Section, the Trustee shall have entered, or shall have elected to enter, into possession, or unless (2) the Companies voluntarily shall have surrendered possession of the mortgaged premises as hereinafter authorized, the Companies shall have the right to vote upon all shares of stock pledged hereunder, for all purposes not inconsistent with the provisions or purposes of this indenture, and with the same force and effect as though such pledge had not been made; and from time to time, upon their demand, the Trustee forthwith shall execute and deliver to them, or their nominees, suitable powers of attorney or proxies for such purposes; it being expressly understood that, notwithstanding any other provision of this indenture, and in addition to all other purposes not inconsistent with the provisions or purposes of this indenture, if desired by the Reading Company,

such proxies may and shall be given to enable it, or its nominees, to vote, and that accordingly it, or they, may vote, upon all shares of stock of the Coal Company pledged hereunder, (1) for the issue or guaranty of bonds by the Coal Company, or to enable the Coal Company to join with the Reading Company in the creation of mortgages or other liens, subordinate to the lien hereof, upon property of the Coal Company; or (2) to enable the Coal Company to borrow money, and to secure the repayment thereof, by a pledge or hypothecation of its coal when actually mined, or the representatives, or the proceeds, of coal actually mined; and it being further expressly understood that, notwithstanding any other provision of this indenture, and in addition to all other purposes not inconsistent with the provisions or purposes of this indenture, if desired by the Reading Company, such proxies may and shall be given to enable it, or its nominees, to vote, and that accordingly it, or they, may vote, upon all shares of stock of the Philadelphia and Reading Railway Company, (1) to enable said Railway Company to change, alter or renew any existing lease of railway or other property now operated by it, or (2) to make a new lease of all or any part of the railway or other property covered by any such existing lease, or to lease additional lines of railway or other property, unless in the opinion of the Trustee, such change, alteration or removal or such new lease or such lease of additional lines of railway or other property is clearly prejudicial to the trust; it being further expressly understood that notwithstanding any other covenant or provision of this indenture, and for the full accomplishment of the purposes of any vote or power given as in this section permitted, the Railway Company and the Coal Company severally and respectively, from time to time, may take any and all action authorized by any such vote or power.

Unless in default Companies to have and to exercise voting power of pledged stock.

SEC. 4. The Trustee shall be authorized to cause to be registered in its name as Trustee any and all coupon bonds

Trustee may register in its name and stamp bonds or shares pledged hereunder.

pledged with it hereunder, or which at any time hereafter may be pledged with it under any of the provisions of this indenture, or to cause the same to be exchanged for registered bonds of any denomination without coupons, or to cause the same to be stamped "Not negotiable. Held by Central Trust Company of New York, as Trustee, under the Mortgage of Reading Company and The Philadelphia and Reading Coal and Iron Company, dated January 5th, 1897." The Trustee shall cause to be transferred into its name as Trustee hereunder all registered bonds and all shares of stock delivered and assigned to it or which at any time hereafter may be delivered and assigned to it as security hereunder.

And may maintain corporate existence of companies whose shares are pledged hereunder.

The Trustee may do whatever may be necessary for the purpose of maintaining or preserving the corporate existence of any and all companies, any of whose shares shall, at any time, be pledged hereunder, and for such purposes, from time to time, it may sell, assign, transfer and deliver so many shares of the stocks of the several companies as may be necessary to qualify persons to act as Directors of, or in any other official relation to, said companies; provided, however, that under this provision no transfer shall be made which shall reduce the amount of stock in any company, held by the Trustee, so as to render it less than a controlling interest in such stock; and in all cases the Trustee may make such arrangements as it shall deem necessary for the protection of the trust hereunder.

Enforcement of pledged securities when in default.

SEC. 5. If any default shall be made in the payment of the principal or interest of any mortgage bonds at any time pledged hereunder, or of other bonds secured by the same mortgage as such bonds held by the Trustee, then, in any such case, the Trustee, upon the written request of the Companies, shall cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose the mortgage or mortgages by which such bonds are secured; but in any case where not less than seventy-

five per cent. in amount of the principal of all the bonds secured by any mortgage are pledged hereunder, proceedings to foreclose such mortgage shall be taken only under such conditions as in the judgment of the Trustee will enable it either to obtain par and interest for the bonds secured by such mortgage held by it, or else to acquire the property covered by such mortgage, and to subject such property or securities representing such property to the lien hereof, as hereinafter provided. The Trustee, however, shall not be liable for any error of judgment in respect of such proceedings or their outcome.

In case the Companies shall be in default in the payment of the principal or interest of any of the bonds hereby secured, and such default shall have continued for a period of six months, or in case a Receiver of the mortgaged premises belonging to either of the Companies shall have been appointed, or in case the Trustee shall have entered, or shall have elected to enter, into possession of any such mortgaged premises under the power hereinafter conferred or by the voluntary action of either of the Companies, then the Trustee, in its discretion, may institute such proceedings without such written request.

Purchase of property by use of pledged securities.

In case, at any time, any company of whose capital stock the greater part shall be held by the Trustee hereunder shall be dissolved or liquidated, or in case all or any of the property of any such company shall be sold upon the insolvency of such company at any judicial or other sale, or in case any property covered by a mortgage securing any bonds held by the Trustee hereunder shall be sold to satisfy such mortgage, (1) then, in any such case, if the property of such company or the property sold can be acquired by crediting on the bonds, claims, indebtedness or stock held by the Trustee hereunder the amount accruing thereon out of the proceeds of such property, and paying not more than twenty-five per cent. of the price of such property in cash, the Trustee may, in its discretion, and (2) in any case, if by the Companies requested in writing, and

Purchase of property by use of pledged collaterals.

by them provided with the necessary funds therefor, the Trustee shall, purchase, or cause to be purchased, such property either in the name and on behalf of one or both of the Companies or in its own name or by purchasing trustees, and shall use such bonds, claims, indebtedness and stock to make payment for such property; and in case of any such purchase, the Trustee shall take such proceedings as it may deem best to cause such property to be vested either in the Reading Company or the Coal Company, subject to the lien of this indenture, or in some other corporation organized, or to be organized, for that purpose, of whose bonded debt and capital stock all, excepting the amount thereof required to qualify directors, shall be received and held by the Trustee, and shall be vested in the Reading Company or the Coal Company, subject to the lien of this indenture.

Power of Trustee to join in reorganization in respect of pledged securities.

Anything herein contained to the contrary notwithstanding, the Trustee may also in any case take such steps as, in its discretion, shall be calculated best to protect its interests hereunder in respect of any bonds or stock subject to the lien hereof, and for that purpose it may join in any plan of reorganization in respect of any such bonds or stocks and may accept new securities issued in exchange therefore under such plan.

Provision for cash required to protect collaterals.

The Companies covenant that, on demand of the Trustee, they forthwith will pay or satisfactorily provide for all expenditures incurred by the Trustee under any of the provisions of this Section, including all sums required to obtain and perfect the ownership and title to any properties which the Trustee shall purchase or cause to be purchased pursuant to the provisions of this Section; and, in case the Companies shall fail so to do, then, without impairment of or prejudice to any of its rights hereunder by reason of the default of the Companies, the Trustee, in its discretion, may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for such advances, made by the Trustee, or by others at its request, with interest

thereon, the Trustee shall have a lien on the property hereby mortgaged and pledged, which lien shall be prior to the lien of the bonds hereby secured, but in no event shall the principal of such lien exceed, in the aggregate, at any one time, a sum equal to three per cent. of the principal of the total amount of bonds issued hereunder and then outstanding.

Disposition of cash proceeds of Collaterals.

In case the Trustee shall not purchase or cause to be purchased the property sold at any such sale, and shall not join in a plan of reorganization as aforesaid in respect of such bonds or stock, the Trustee shall receive any portion of the proceeds of the sale accruing on the securities by it held hereunder, and shall apply the same in the manner provided in Article Sixth hereof in respect of moneys arising from the sale of other property released from the lien hereof as therein provided.

Trustee to consent to extension or renewal of bonds pledged hereunder.

SEC. 6. The Trustee, at any time in its discretion, may, and, if requested in writing by the Companies, shall, consent to the extension or renewal of any of the said several bonds pledged with or assigned to, or which hereafter shall be pledged with or assigned to, the Trustee hereunder, and of the mortgages securing the same, and in case of the renewal of any of such bonds the Trustee may surrender the same to the company which issued them, or its successor, and in lieu thereof may receive renewal bonds bearing such interest and maturing at such time as the Trustee may deem reasonable; provided that such extended or renewal bonds shall be secured by a lien and charge upon the same property equal or superior to that of the bonds renewed or extended. The Trustee may receive the certificate of counsel of the Companies as conclusive evidence that such extended or renewed bonds are so secured. All bonds received in exchange for, or in renewal of, the said several bonds heretofore mentioned, pledged with or assigned to, or which hereafter may be pledged with or assigned to, the Trustee, shall, by the Trustee, be held subject to the lien and to all the terms and provisions of this indenture,

in the same manner and to the same extent as the bonds in exchange for which, or in renewal of which, they shall have been received.

Remedies of Trustee and Bondholders.

ARTICLE FOUR.

REMEDIES OF TRUSTEE AND BONDHOLDERS.

Subordination of lien of detached coupons.

SECTION 1. Neither any coupon belonging to any bond hereby secured, nor any claim for interest on any registered bond which in any way, on or after maturity, shall have been transferred or pledged, separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of, or from, this indenture, except after the prior payment in full of the principal of all bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

Power of entry after default.

SEC. 2. In case (1) default shall be made in the payment of any interest on any bond at any time issued under and secured by this indenture, or on any bond (except bonds held by the Trustee hereunder, and except as provided in Section 6 of Article One) for the acquisition of which bonds secured hereby are reserved under Section 3 of Article One hereof, and any such default shall continue for a period of six months; or in case (2) default shall be made in the due and punctual payment of the principal of any bond secured hereby or of any bond (except bonds held by the Trustee hereunder, and except as provided in Section 6 of Article One) for the acquisition of which bonds secured hereby are reserved as aforesaid; or in case (3) default shall be made by the Reading Company or by the Coal Company in the payment of any tax, assessment or other governmental charge lawfully imposed or levied upon any part of the property and premises hereby mortgaged, belonging to such Company, or upon the income and profits thereof, and such default shall continue for a period of six months after written notice thereof from the Trustee

or from holders of five per cent. in amount of the bonds hereby secured; or in case (1) either of the Companies shall make default in the due observance and performance of any other covenant or condition herein contained, and any such default shall continue for a period of six months after written notice thereof from the Trustee or from the holders of five per cent. in amount of the bonds hereby secured; then, and in each and every such case of default (provided, however, in respect of any of the three cases so indicated, that such default shall have continued for six months as aforesaid), the Trustee personally, or by its agent or agents, attorney or attorneys, may enter into and upon all or any part of the property and premises, lands, rights, interests and franchises hereby conveyed, or intended so to be, and each and every part thereof, and may exclude the Companies, their agents and servants, wholly therefrom, and, having and holding the same, may use, operate, manage and control said premises, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents and servants or attorneys, to the best advantage of the holders of the bonds hereby secured in accordance with law and with any statute relating to said premises or any part thereof, or to the operation thereof; and, upon every such entry, the Trustee, at the expense of the trust estate, from time to time, by purchase, repairs or construction, may maintain and restore, and insure or keep insured, the property, buildings and structures erected or provided for use in connection with said premises, and whereof it shall become possessed, as aforesaid, in the same manner and to the same extent as is usual, and likewise, from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements and useful alterations, additions, betterments and improvements thereto and thereon; and the Trustee in such case shall have the right to manage the mortgaged premises as aforesaid, and carry on the business, and exercise all rights and powers of the Companies, either in

Power of entry after default.

Power of entry after default.

their names, or in the name of either of them, or otherwise, as the Trustee shall deem best; and its shall be entitled to collect and receive all incomes, rents, issues and profit of the same and every part thereof, and also the income from stocks and bonds pledged hereunder, and after deducting the expenses of operating said premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said premises and property, or any part thereof, including any interest paid on bonds prior in lien to those secured hereby, as well as just and reasonable compensation for its own services and for all agents, clerks, servants and other employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

Application of income by Trustee in possession.

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest remaining in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of four per cent. per annum; such payments to be made ratably to the persons or parties entitled thereto, without discrimination or preference;

In case the principal of the bonds hereby secured shall have become due by declaration or otherwise, first, to the payment of the accrued interest (with interest thereon at the rate of four per cent. per annum), in the order of the maturity of the installments thereof, and next, to the payment of the principal of all bonds hereby secured; in every instance such payments to be made ratably to the person or persons entitled to such payment, without any discrimination or preference;

These provisions, however, not being intended in anywise to modify the provisions of Section 1 of this Article.

In case, and during such continuance, of any such default in either of the first three cases specified in this section, either with or without entry by the Trustee, and also in the fourth case, if the Trustee shall have entered or shall have elected to enter as aforesaid, the Trustee shall have, exercise, and enjoy the right to vote on all shares of stock pledged or agreed to be pledged hereunder, and, for the benefit of the holders of bonds hereby secured, the right to receive and collect all interest moneys and dividends maturing or payable upon all pledged bonds and stocks, and to apply as hereinbefore provided the net moneys received, and as holder of such shares of stock and of such bonds pledged or agreed to be pledged in this indenture, to perform any and all acts, and to make or execute any and all requests, requisitions or other instruments. In the event that a Receiver of the mortgaged premises shall have been appointed and shall be in possession thereof, the Trustee, from time to time, in its discretion, may turn over any part or all of the interest moneys and dividends so collected by it, to such Receiver, and may co-operate with such Receiver in managing and operating the entire properties mortgaged or pledged hereunder in such manner as the Trustee shall deem for the best interest of the holders of the bonds hereby secured.

After default Trustee in possession may collect interest and dividends; and may vote on stock.

SEC. 3. In case default shall be made by the Companies in the payment of any interest on any bond hereby secured, and such default shall continue for a period of six months, then and in every case of such continuing default, upon the written request of the holders of a majority in amount of the bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Companies, shall declare the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary

Upon specified default Trustee may declare principal due.

Power to declare principal due and to revoke declaration.

thereof in anywise notwithstanding. This provision is, however, subject to the condition, that if at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of four per cent. per annum on overdue installments of interest, shall either be paid by the Companies or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Companies and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other lawful reason, or shall have been determined adversely to the Trustee, then and in every such case, the Companies shall be restored to their former position and rights hereunder in respect of the mortgaged premises and the shares of stock and bonds, and other property, herein pledged or agreed to be pledged; and, upon their written request, the Trustee shall do, make, execute, acknowledge and deliver such acts, deeds, instruments and assurances in the law as may be required to effectuate such purpose; but, nevertheless, all rights, remedies and powers of the Trustee shall survive and continue as though no such proceedings had been taken.

Power to sell or to foreclose by judicial proceedings.

SEC. 4. In case (1) default shall be made by the Companies in the payment of any interest on any bond secured by this indenture, or on any bond (other than bonds held by the Trustee hereunder, and except as provided in Section 6 of Article One), for the acquisition of which bonds

hereby secured are reserved as aforesaid, and any such default shall continue for a period of six months; or in case (2) default shall be made by the Companies in the due and punctual payment of the principal of any bond secured hereby, or of any bond (other than bonds held by the Trustee hereunder, and except as provided in Section 6 of Article One), for the acquisition of which bonds hereby secured are reserved as aforesaid; or in case (3) default shall be made by either of the Companies in the payment of any tax, assessment or other governmental charge lawfully imposed or levied upon any part of the mortaged property or premises belonging to such Company or upon the income and profits thereof, and such default shall continue for a period of six months after written notice thereof from the Trustee or from holders of five per cent. in amount of the bonds hereby secured; or in case (4) either of the Companies shall make default in the due observance and performance of any other covenant or condition herein contained, and any such default shall continue for a period of six months after written notice thereof from the Trustee or from the holders of five per cent. in amount of the bonds hereby secured and then outstanding; then, and in each and every such case of default (provided, however, in respect of any of the three cases so indicated, that such default shall have continued for six months as aforesaid), the Trustee, with or without entry, personally or by attorney, in its discretion (*a*) may sell to the highest and best bidder, all and singular the mortgaged property and premises, bonds and stocks, rights, franchises and interests, lands and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in two separate lots, of which the first lot, to be sold as an entirety, shall be all the property herein granted by, or in behalf of, the Reading Company; and the second lot, to be sold separately as an entirety, shall be all the property herein granted by, or in behalf of, the Coal

Power to sell or to foreclose by judicial proceedings.

in discretion of Trustee.

Power to sell or to foreclose by judicial proceedings.

Company; provided, however, in respect of each lot that if a sale thereof in parcels shall be required under the provisions of Section 6 of this Article, such sale may be made in parcels as in said Section provided; which sale or sales shall be made at public auction at such place in the City of Philadelphia, in the State of Pennsylvania, or at such other place, and at such time and upon such terms, as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or (*b*) immediately upon the expiration of the six months in the three cases so indicated, and immediately upon default in payment of principal in the other case, may proceed to protect and enforce the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and to enforce any of its rights or duties hereunder.

upon request of holders 25% of bond.

Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any such continuing default, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all needful steps for the protection and enforcement of its rights and the rights of the bondholders secured hereby, and to exercise the powers of entry and sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured.

SEC. 5. Anything in this indenture contained to the contrary notwithstanding, the holders of seventy-five per cent. in amount of the bonds hereby secured and then outstanding, in case of any subsisting default, from time to time, shall have the right

to direct and control the method and place of conducting any and all proceedings for any sale of the premises hereby conveyed and pledged, or agreed or intended so to be, or for the foreclosure of this indenture, or for the appointment of a Receiver, or of any other proceedings hereunder.

Holders of 75% of bonds may direct proceedings of Trustee.

SEC. 6. In the event of any sale, whether made under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the property hereby mortgaged and pledged shall be sold as provided in Section 4 of this Article in two separate lots, and in case of each of such lots as an entirety, including all the rights, title, estates, lands, rights to lands, railroads, equipment, franchises, leases, leasehold interests, contracts, stocks, bonds and other real and personal property of every name and nature, unless the holders of a majority in amount of the bonds hereby secured then outstanding shall, in writing, request the Trustee to cause one or both of said two lots to be sold in parcels, in which case the sale thereof shall be made in such parcels as may be specified in such request or petition, or unless such sale as an entirety is impracticable by reason of some statute or other cause; and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be.

Property to be sold in two separate lots, each as an entirety, unless otherwise directed or necessary.

SEC. 7. Notice of any such sale pursuant to any provision of this indenture shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive weeks prior to such sale in a newspaper published in New York, N. Y.; and in a newspaper published in Philadelphia, Pennsylvania.

Notice of sale required.

SEC. 8. Upon the completion of any sale or sales under this indenture, the Trustee shall make, execute and deliver to the accepted purchaser or purchasers a good and sufficient deed,

Trustee to deliver conveyance.

Conveyance to purchasers of mortgaged premises.

or good and sufficient deeds, of conveyance, of the property and franchises sold. And the Trustee and its successors are hereby appointed the true and lawful attorney or attorneys, irrevocable, of the Companies, and of each of them, in their, and each of their, name and stead to make all necessary deeds and conveyances of property and all necessary transfers of shares of stock or bonds or other obligations thus sold, and for that purpose it and they may execute all necessary acts of assignment and transfer, and may substitute one or more persons with like power, the Companies hereby ratifying and confirming all that their said attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof.

Sale hereunder a bar

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, shall operate to divest all rights, title, interest, claim and demand whatsoever, either at law or in equity, of the Companies of, in and to the premises sold, and shall be a perpetual bar both at law and in equity against the Companies, and each of them, their, and each of their, successors and assigns, and against any and all persons claiming or to claim the premises sold, or any part or parcel thereof, by, from, through or under the Companies, their and each of their successors and assigns, or any of them.

All chattels hereunder to be considered real estate.

The personal property and chattels conveyed, or intended to be conveyed by or pursuant to this indenture, other than stocks, bonds and other securities, and property pledged or to be pledged with the Trustee, shall be real estate for all the purposes of this indenture, and shall be held and taken to be fixtures and appurtenances of the said two parcels severally and respectively, and part thereof, and are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

SEC. 9. The Trustee, from time to time, may adjourn any sale to be made by it under the provisions of this indenture,

by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned. Trustee may adjourn sale.

SEC. 10. The receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers of the property sold as aforesaid, for the purchase money, and no such purchaser or purchasers, or his, their or its representatives, vendees, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money, upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication, or non-application, of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale. Receipt of Trustee to discharge purchaser.

SEC. 11. In case of any such sale, whether under the power of sale hereby granted, or pursuant to judicial proceedings, the whole of the principal sum of the bonds hereby secured, if not previously declared due, shall at once become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding. Upon sale principal of bonds to become due.

SEC. 12. The proceeds or avails of any such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, and the purchase money paid thereon, together with any sums which may be held by the Trustee under any of the provisions of this indenture, at the time of, or after, such sale, as part of the trust estate or the proceeds thereof, shall be applied as follows: Distribution of proceeds of sale.

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the

Distribution of proceeds of sale.

Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made and incurred by the Trustee in managing and maintaining the property hereby conveyed or so intended to be, and of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens to which such sales shall have been made subject.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of four per cent. per annum on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and the accrued and unpaid interest; subject, however, to the provisions of Section 1 of this Article.

Third. To the payment of the surplus, if any, to the Reading Company and to the Coal Company severally and respectively, or to whomsoever may be lawfully entitled to receive the same.

Companies covenant to pay Trustee amount of Mortgage Debt.

SEC. 13. The Companies covenant that in case (1) default shall be made in the payment of any interest on any bonds at any time outstanding and secured by this indenture, or in case (2) default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether at the maturity of said bonds or by declaration as authorized by this indenture, or by a sale of the mortgaged premises as hereinbefore provided, then, upon demand of the Trustee, they will pay to the Trustee the whole amount of the interest, or of the interest and principal, due and

payable on all the bonds hereby secured then outstanding, with interest at the rate of four per cent. per annum upon the overdue principal and installments of interest; and in case they shall fail to pay the same, forthwith, upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

Companies covenant to pay Trustee amount of Mortgage Debt.

The Trustee shall be entitled to recover judgment as aforesaid, either before, or after, or during the pendency of, any proceedings for the enforcement of the lien of this indenture upon the mortgaged and pledged premises, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien thereof; and in case of a sale of the mortgaged premises and of the application of the proceeds of sale to the payment of the mortgaged debt, the Trustee, in its own name and as Trustee of an express trust, shall be entitled to enforce payment of, and to receive, all amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the mortgage debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee and no levy of any execution upon any such judgment upon property subject to the lien of this indenture, or upon any other property, shall, in any manner, or to any extent, affect the lien of the Trustee upon the mortgaged premises or any part thereof, or any rights, powers or remedies of the Trustee hereunder, or any rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies shall continue unimpaired as before.

Trustee entitled to recover deficiency judgment.

Any moneys collected by the Trustee under this Section shall by it be distributed and paid over to the persons regis-

Trustee's distribution of sums collected under deficiency judgment.

tered as holders of the registered bonds at the time of payment, and the persons presenting the coupon bonds and coupons for such payment, without any preference or priority of any kind, and ratably according to the amounts which shall have become due upon such bonds and coupons respectively.

Waiver of extension, appraisement and redemption laws.

SEC. 14. The Companies will not, nor will either of them, at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force in any locality where the mortgaged premises or pledged property, or any part of either, may or shall be situate, nor will they claim, take or insist on any benefit or advantage from any law now or hereafter in force, providing for the valuation, or appraisement, of the mortgaged premises, or pledged property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction; nor after any such sale or sales will they claim or exercise any right under any statute enacted by the Congress of the United States, or by the Legislature of any State, to redeem the property so sold, or any part thereof; and they hereby expressly waive all benefit and advantage of any such law or laws; and they covenant that they will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that they will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

Right to appointment of Receiver.

SEC. 15. Upon filing a bill in equity, or upon commencement of any other judicial proceedings to enforce any right of the Trustee or of the bondholders under this indenture, the Trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein and hereby conferred and provided to be exercised by the Trustee upon

Right to appointment of Receiver.

the occurrence and continuance of default as hereinbefore provided; and, in any case of any default entitling the Trustee to enter as provided in Section 2 of Article Four hereof, the Trustee, as matter of right, shall be entitled to the appointment of a Receiver of the premises hereby mortgaged, and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the Court making such appointment shall confer; but notwithstanding the appointment of any Receiver, the Trustee shall be entitled, as pledgee, to continue to retain possession and control of the stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

Voluntary surrender of possession to Trustee.

SEC. 16. Each of the Companies at any time hereafter, before full payment of the bonds secured hereby, and whenever deemed expedient for the better security of such bonds, although there be then no default entitling the Trustee to enter into possession, may, with the consent of the Trustee, surrender and deliver to the Trustee full possession of the whole or any part of the property, premises and interest by it hereby conveyed, or intended so to be, for any period, fixed or indefinite. Upon such surrender and delivery to the Trustee, with its consent, the Trustee shall enter into and upon the premises so surrendered and delivered, and shall take and receive possession thereof, for such period, fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises, or of any part thereof, the Trustee, from the time of its entry, shall work, maintain, use, manage, control and employ the same in accordance with the provisions of this Indenture, and shall receive and apply the income and revenues thereof as provided in Section 2 of

Appointment of Receiver by consent.

this Article. Upon application of the Trustee, and with consent of the Companies if there be then no subsisting default hereunder, and without such consent if there shall then be a subsisting default entitling the Trustee to enter as provided in Section 2 of this Article hereof, a Receiver may be appointed to take possession of, and to operate, maintain and manage the whole or any part of said property wheresoever the same may be situated, with all the rights, powers and duties by this Section conferred upon the Trustee, and the Companies shall transfer and deliver to such Receiver all such property in its possession wheresoever the same may be situated; provided, however, that notwithstanding the appointment of any such Receiver the Trustee, as pledgee, shall be entitled to retain possession and control of the stocks, bonds, cash and other property pledged with the Trustee hereunder.

No suit by bondholders.

SEC. 17. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture or for the execution of any trust thereof, or for the appointment of a Receiver, or for any other remedy hereunder, unless such holder shall previously have given to the Trustee written notice of such default, and of the continuance thereof as hereinbefore provided, nor unless, also, the holders of twenty-five per cent. in amount of the bonds hereby secured and then outstanding shall have made written request of the Trustee, and shall have afforded to it reasonable opportunity, either itself to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, nor unless, also, they shall have offered to the Trustee adequate security and indemnity against the cost, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the

powers and trusts of this indenture and to any action, or cause of action, for foreclosure or for the appointment of a Receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons. No suit by bondholders.

SEC. 18. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or upon or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Remedies hereunder cumulative.

SEC. 19. In case of any sale hereunder, any and all purchasers in making settlement or payment, shall be entitled to turn in any bonds and any matured and unpaid interest obligations hereby secured, estimating the value of such bonds and coupons for that purpose at the sum payable out of the net proceeds of such sale to the holder or holders of such bonds and coupons as his or their ratable share of such net proceeds, after allowing for the proportion of the total payment required to be made in cash for the cost and expenses of the sale or otherwise; and if such share of net proceeds shall be less than the amount then due upon such bonds and coupons, such purchaser or purchasers may make such settlement by receipting on the bonds the amount to be credited thereupon; and at any such sale any bondholders may bid for and purchase such property, and, upon compliance with the terms of sale, may hold, retain, and Right of purchaser to pay by credit on bonds.

dispose of, such property without further accountability therefor.

Trustee's delay not to operate as waiver.

SEC. 20. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power arising from any default continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein.

Holders of $\frac{4}{5}$ of bonds may direct Trustee to join in reorganization giving priority over bonds hereby secured.

SEC. 21. In case of any default hereunder, if, in order to preserve the franchises of the Companies, or either of them, and to avoid a sale hereunder, any plan of reorganization shall be proposed with provisions for the modification of this mortgage, so far as to authorize and require the creation of new liens upon the mortgaged premises prior and superior to the lien hereof, then and in every such case registered holders of four-fifths in amount of all outstanding bonds hereby secured, by writing, may direct the Trustee, in behalf of all the holders of all bonds then or thereafter issued hereunder, to acquiesce in the provisions of such plan: which plan also may determine and provide for the interest of other creditors and lienors and of the shareholders of the Companies, or either of them. This special power, however, is granted to the registered holders of four-fifths in amount of the bonds upon the express condition that no bond hereby secured and then outstanding shall be changed as to amount or date of payment of principal or rate or dates of payment of interest. Thereupon but not otherwise, the Trustee shall by writing acquiesce in such provisions of such plan, and such acquiescence by the Trustee shall constitute the irrevocable assent of all holders of bonds and coupons hereby secured to any such accepted modifications, as set forth in such plan and necessary to give effect to such provisions thereof. All such modifications so affecting this indenture and the bonds and coupons hereby secured

shall be reduced to a written agreement between the Companies and the Trustee, and such agreement shall be recorded in New York County, New York, and Dauphin County, Pennsylvania; and thenceforth shall be deemed to be part of this indenture, and thereafter the lien of this indenture, and of the bonds hereby secured, shall be deemed to be and shall be subordinate to such new and prior liens created pursuant to such plan, but only to the extent specified in such written agreement.

Registration for any purpose of this section shall be sufficient if then or theretofore made and then continuing in any manner permitted by Section 4 of Article Two of this indenture.

ARTICLE FIVE.

AUTHENTICATION OF INSTRUMENTS EXECUTED BY BONDHOLDERS.

Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, if made in the following manner:

The fact and date of the execution by any person of any such request, or other instrument, or writing, may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution.

The amount of coupon bonds transferable by delivery, held by any person executing any such request or other instrument

Authentication of bondholders' acts.

as the holder of bonds, and the issue numbers of the bonds held by such person, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depositary (wherever situated), whose certificate shall be deemed by the Trustee to be satisfactory, showing that such person had on deposit with such depositary the bonds described in such certificate at the date therein mentioned. The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds as provided in Section 4 of Article Two hereof.

Such proof shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument.

ARTICLE SIX.

RELEASE OF PROPERTY MORTGAGED.

Release by Trustee of property upon request of Companies.

Upon the written request of the Companies, approved by resolution of their respective Boards of Directors or Executive Committees, from time to time while the Companies are in possession of the mortgaged premises, but subject to the conditions and limitations in this Section prescribed, and not otherwise, the Trustee, in its discretion, may release from the lien and operation of this indenture any part of the mortgaged and pledged premises, excepting (1) the bonds (other than bonds of the Schuylkill Navigation Company) mentioned in Subdivision Fourth of the granting clauses of this indenture, (2) the shares of stock mentioned under I. and II. of Subdivision Fifth of said granting clauses, and (3) any bonds and shares hereafter pledged hereunder. It is expressly agreed by the parties hereto that the bonds of the Schuylkill Navigation Company pledged hereunder may be so released.

No release hereunder shall be made unless the Companies

shall have sold, or shall have contracted to sell or to exchange for other property, the property so to be released. The proceeds of any and all such sales, and also all moneys received as compensation for any property subject to this indenture taken by exercise of the power of eminent domain, may be disposed of as required by any mortgage securing any of said outstanding old bonds, and the Trustee may acquiesce in such disposition. So far as such proceeds and moneys shall not be disposed of pursuant to any such requirement, they shall be set apart and applied, either (1) to the purchase of bonds hereby secured in the same manner as is provided in Section 12 of Article Two hereof; or (2), with the approval of the Trustee, to the purchase of other property, real or personal, which shall be conveyed in trust by the Companies to the Trustee, subject to all the trusts hereby declared. Any new property acquired by the Companies to take the place of any property released hereunder, *ipso facto*, shall become and be subject to the lien of this indenture, as fully as if hereby specifically mortgaged, but, if requested by the Trustee, the Companies severally and respectively will convey the same to the Trustee by appropriate deeds upon the trusts and for the purposes of this indenture.

Release of property by Trustee upon request of Companies.

Application of proceeds of released property.

If, however, in any one calendar year, the Trustee shall be called upon to release property of the Coal Company and the aggregate consideration paid or to be paid for all such property shall exceed $50,000, before executing releases in excess of said total amount of $50,000 in such year, the Trustee shall employ, at the expense of the Companies, some person by the Trustee deemed fully competent to pass upon such matters, and shall require from him his written opinion, verified before a notary public, (1) whether the property for which the release is asked is no longer desirable for the purpose of maintaining, operating and developing the coal business of the Coal Company, either at the present or in the future; and (2) whether without such property said coal

Conditions for release of more then $50,000 in any calendar year.

Release by Trustee of property upon request of Companies.

business, both present and future, can be maintained, operated and developed with substantially equal efficiency and economy; and, unless upon both of said points (1) and (2) such written opinion shall in the judgment of the Trustee clearly justify such release of such property, it shall decline to release the same.

The Companies, each for itself, covenant and agree that when applying for release of property hereunder they will in all cases state in writing to the Trustee the full consideration paid or to be paid by the purchasers, if such full consideration be not truly recited in the deed of release.

The Companies, severally and respectively, from time to time, while in possession of the mortgaged premises, shall also have full power, in their discretion, to dispose of any portion of the machinery, equipments and implements, at any time held or acquired, which may have become unfit for such use, replacing the same by new machinery, equipments or implements, which, immediately upon such acquisition, shall become subject to the operation of this indenture.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this Article of this indenture be required to see to the application of the purchase money.

In case any portion of the mortgaged or pledged premises shall be in the possession of a Receiver lawfully appointed, the powers in and by this Section conferred upon the Companies may be exercised by such Receiver with the approval of the Trustee; and if the Trustee shall be in possession of the mortgaged or pledged premises under any provision of this indenture, then all the powers by this Section conferred upon the Companies may be exercised by the Trustee in its discretion.

ARTICLE SEVEN.

PROVISIONS CONCERNING TRUSTEE.

Provision for protection of Trustee.

SECTION 1. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; or for anything whatever, in connection with this trust, except willful misconduct or gross negligence. The Trustee shall not be personally liable for any debts contracted by it or for damages to persons or property carried or injured, or for salaries or non-fulfillment of contracts, during any period wherein the Trustee shall manage the trust property or premises upon entry or voluntary surrender as aforesaid. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trust hereby created, which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder unless notified in writing of such default by the holders of at least five per cent. of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested in writing to take action in respect thereof by the holders of not less than twenty-five per cent. of the bonds hereby secured then outstanding, and tendered reasonable indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but neither any such notice or request, not this provision therefor, shall affect any discretion herein given to the Trustee to determine whether or not it shall take action in respect of such default, or to take action without such request. The Trustee shall not be responsible for the recording of this indenture, or for the filing of the same as a chattel mortgage, or as a mortgage upon boats or other marine equipment.

The Trustee shall be entitled to reasonable compensation

for all services rendered by it in the execution of the trusts hereby created.

Resignation Removal of Trustee.

SEC. 2. The Trustee, or any Trustee hereafter appointed, may resign and be discharged of the trusts created by this indenture by giving notice thereof to the Companies and to the bondholders, by publication, at least twice a week, for four successive weeks, in one newspaper at that time published in New York, N. Y.; and in one newspaper published in Philadelphia, Pennsylvania, and by due execution of the conveyances hereinafter required.

The Trustee may be removed at any time by an instrument in writing under the hands of three-quarters in amount of the holders of the bonds secured hereby and then outstanding.

Appointment of successor Trustee.

SEC. 3. In case at any time the said Trustee, or any trustee hereafter appointed, shall resign or be removed or otherwise become incapable of acting, a successor, or successors, may be appointed by the holders of a majority in amount of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized; provided, nevertheless, and it is hereby agreed and declared that, in case at any time there shall be a vacancy in the office of trustee hereunder, the Companies, by an instrument executed by order of their respective boards of directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders or as here authorized. The Companies shall thereupon publish notice of such appointment once a week for six successive weeks in a newspaper published in New York, N. Y.; and in a newspaper published in Philadelphia, Pennsylvania; and any new trustee so appointed by the Companies shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the bondholders prior to the expiration of ninety days after such publication of notice. In case no such appointment shall be made by the

bondholders prior to the expiration of such ninety days, a new trustee, to supersede the trustee appointed by the Companies, may nevertheless be appointed by any judge of the United States Circuit Court for the Third Circuit or by any court of competent jurisdiction in the premises upon the application of one-quarter in amount of the bondholders. Every such trustee appointed in place of Central Trust Company of New York, or its successor in the trust, shall always be a trust company in good standing, doing business in the City of New York, and having a capital and surplus aggregating at least $2,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms. Appointment of Successor Trustee.

Any new trustee appointed hereunder shall execute, acknowledge and deliver to the trustee last in office and also to the Companies an instrument accepting such appointment hereunder, and thereupon such new trustee shall become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the trust hereunder with like effect as if originally named as trustee herein without any further act, deed or conveyance; but the trustee ceasing to act shall, nevertheless, on the written request of the new trustee, execute and deliver an instrument transferring to such new trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so resigning or removed, and shall duly assign, transfer and deliver any stocks, bonds or other property and moneys held by such trustee to the new trustee so appointed in its or his place.

Should any deed, conveyance or instrument in writing from the Companies be required by any new trustee, for more fully and certainly vesting in and confirming to such new trustee such estates, rights, powers and trusts, any and all such deeds, conveyances and instruments in writing shall, on request, be made, executed, acknowledged and delivered by the Companies.

Article Eight.

No Recourse.

Bondholders to have no recourse against Stockholders etc.

No recourse under any obligation, covenant or agreement of this indenture, or of any bond or coupon hereby secured, shall be had against any incorporator, stockholder, officer or director of the Companies, or either of them, or of any successor corporation, either directly or through the Companies, or either of them, by the enforcement of any assessment or by any legal or equitable proceeding by virute of any statute or otherwise; it being expressly agreed and understood that this mortgage and the obligations hereby secured are solely corporate obligations and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors of the Companies, or either of them, or of any successor corporation or any or either of them, under or by reason of any or either of the obligations, covenants or agreements in this indenture, or in any of the bonds or coupons hereby secured, expressed and contained or implied therefrom, and that any and all personal liability of every name and nature, either at common law or in equity, or by statute, of every such incorporator, stockholder, officer or director, is hereby expressly waived as a condition of, and consideration for, the execution and issue of this mortgage and such bonds and coupons.

Article Nine.

Companies' Right to Possession and Satisfaction.

Right of possession in Companies until default

Section 1. Until some default shall have been made in the due and punctual payment of the interest, or of the principal, of the bonds hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Companies, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, or until the Companies voluntarily shall have surrendered possession to the Trustee as herein permitted, the Companies, their successors and assigns, shall be suffered

and permitted to retain actual possession of all the premises hereby mortgaged (other than the railway equipment, vessels, colliers, boats and barges and the bonds, certificates of stock, cash and other property pledged or to be pledged hereunder with the Trustee) and the same and every part thereof, with the rights and franchises appertaining thereto, and the tolls, income, rents, issues and profits thereof to manage, operate, collect, receive, use and enjoy in any manner not inconsistent with the provisions hereof. It being, however, expressly understood and agreed that, simultaneously with the execution hereof, the Trustee, in such manner as it shall deem proper, may take possession, and thereafter shall maintain possession, of the railway, equipment, vessels, colliers, boats and barges hereby mortgaged and pledged, and that it may maintain its possession thereof either by itself or from time to time by leases thereof to the Philadelphia and Reading Railway Company, upon terms and by instruments to be approved by the Reading Company; but, unless and until in pursuance of some provision of Article Four of this indenture, the Trustee shall have proceeded, or shall have elected to proceed, to enforce some right under this indenture by foreclosure, entry or otherwise, the rent reserved and payable under such leases shall be paid to, and be received by, the Treasurer, for the time being, of the Reading Company, for and on account of the Trustee, as a separate Trust Fund, to be held and applied by such Treasurer in each instance in payment of the next ensuing semi-annual installment of interest to become due upon bonds hereby secured.

Right of possession in Companies until default.

SEC. 2. If, when the bonds hereby secured shall have become due and payable, the Companies shall well and truly pay, or cause to be paid, the whole amount of the principal moneys and interest due upon all of the bonds and coupons for interest thereon hereby secured, then outstanding, or shall provide for such payment by depositing with the Trustee hereunder for the payment of such bonds and coupons

Upon payment of bonds, mortgage to be satisfied.

Upon payment of bonds, mortgage to be satisfied.

the entire amount due thereon for principal and interest, and shall also pay, or cause to be paid, all other sums payable hereunder by the Companies, and shall well and truly perform all the things herein required to be performed by it, according to the true intent and meaning of this indenture, then and in that case all property, rights and interest hereby conveyed or pledged shall revert to the Companies, and the estate, right, title and interest of the Trustee shall thereupon cease, determine and become void, and the Trustee in such case, on demand of the Companies, and at their cost and expense, shall enter satisfaction of this indenture upon the records; otherwise, the same shall be, continue and remain in full force and virtue.

ARTICLE TEN.

GENERAL CLAUSES AS TO SUCCESSORS AND MERGERS.

Covenant to bind successors.

SECTION 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Companies, shall bind them and each of them severally and respectively and their and each of their successors and assigns, whether so expressed or not, and whenever necessary for the full protection and security of the securities and of the holders of bonds issued hereunder and hereby secured, are to be understood, and are also intended, to be the joint and several obligations of the Companies.

Either of the Companies may consolidate or sell its property, but subject to the lien of this mortgage.

SEC. 2. Nothing contained in this indenture, or in any bond hereby secured, shall prevent any lawful consolidation or merger of the Companies, or either of them, with each other or with any other corporation, or any conveyance and transfer, subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged and pledged premises of the Reading Company, or of the Coal Company, or of the property of the Philadelphia and Reading Railway Company, severally and respectively, in each separate case, as an entirety to some corporation at that time existing under and by virtue

of the laws of the United States or any State thereof, and lawfully entitled to acquire such portion of the property affected by this mortgage; provided, however, that such consolidation, merger or sale shall not impair the lien and security of this indenture, or any of the rights or powers of the Trustee, or of the bondholders hereunder, and that, upon any such consolidation, merger or sale, the due and punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by every corporation formed by such consolidation or merger, or purchasing as aforesaid.

Either of the Companies may consolidate or sell its property, but subject to the liens of this mortgage.

SEC. 3. In case either or both of the Companies, pursuant to Section 2 of this Article, shall be consolidated or merged with any other corporation, or shall sell, convey and transfer, subject to this indenture, all its mortgaged and pledged premises as an entirety as aforesaid, every successor corporation formed by such consolidation or into which the Companies, or either of them, shall have been merged, or which shall have purchased and received any conveyance and transfer as aforesaid, upon executing and causing to be recorded an indenture with the Trustee, satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of said bonds and the performance of all the covenants and conditions of this indenture, shall succeed to, and be substituted for, that one of the Companies, parties of the first and second parts hereto, to whose rights it shall have succeeded, with the same effect as if it had been named herein as a party of the first part or of the second part hereto, and every such successor corporation thereupon may cause to be signed and may issue, either in its own name or in the name of that one of the Companies to whose rights it shall have succeeded, any or all of such bonds which shall not theretofore have been signed by

Issue of bonds by successor Company, in case of sale or consolidation.

Issue of bonds by successor Company in case of sale or consolidation.

such one of the Companies and delivered to the Trustee, and subject to all the terms, conditions and restrictions herein prescribed, the Trustee shall certify and deliver any of such bonds which shall have been previously signed and delivered by the officers of the Companies to the Trustee for certification, and any of such bonds which such successor corporation shall thereafter cause to be signed and delivered to the Trustee for that purpose, upon the order of such successor corporation, instead of upon the order of that one of the Companies to whose rights it shall have succeeded. All bonds so issued shall in all respects have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture, as though all of said bonds had been issued at the date of the execution hereof.

Powers vested in any successor company.

SEC. 4. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the term "Reading Company" includes and means not only the corporation of that name, party of the first part hereto, but also any such successor corporation, now existing or hereafter formed under the laws of the United States or of any State or States thereof. Every such successor corporation shall possess and from time to time may exercise each and every right and power hereunder of the Reading Company, in its name or otherwise. And similarly the term Coal Company includes and means not only the said The Philadelphia and Reading Coal and Iron Company, but also any such successor corporation to it; and every such successor corporation shall possess and from time to time may exercise each and every right and power hereunder of The Philadelphia and Reading Coal and Iron Company, in its name or otherwise.

SEC. 5. Any act or proceeding by any term of this indenture, or of any bond or resolution herein recited, required or provided to be done or performed by any board or officer of the

Companies, or either of them, shall and may, in event of any change in its existence, be done and performed with like force and effect by the like board or officer of any corporation that shall at the time be lawful sole successor of the Reading Company or of the Coal Company, as the case may require. Action may be taken by officers of successor company.

SEC. 6. Nevertheless, before the exercise of the powers conferred by this article, the Companies, by instrument in writing executed by authority of two-thirds of their respective boards of directors and delivered to the Trustee, may surrender any of the powers reserved to the Companies or to such successor corporation under this Article, and thereupon such power so surrendered shall terminate. Powers under this article may be surrendered.

ARTICLE ELEVEN.

The Companies may deem and treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and the Companies shall not be affected by any notice to the contrary. Companies may treat bearer of bonds and coupons as absolute owner.

ARTICLE TWELVE.

The Central Trust Company of New York, Trustee, party hereto of the third part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth. Trustee's acceptance of Trust.

The words "the Trustee," or "said Trustee," or any other equivalent term, as used in this indenture (except when other- Definitions.

wise clearly indicated), shall be held and construed to mean the Trustee, or Trustees, for the time being, whether original or successor, and the words "Trustee," "bond," "bondholder" and "holder" shall include the plural as well as the singular number, and the term "majority" shall signify "majority in amount," whether or not so expressed.

Amounts subject to correction.

Any and all specifications of amounts of bonds or shares of stock pledged, or to be pledged, hereunder are and shall be subject to increase or diminution so as to conform to any corrected statement thereof to be made and delivered by the Companies to the Trustee at the time of delivery of such bonds or the certificates of such shares, and thence forward such corrected statement shall for all purposes hereof stand in place of such original specification, as a full substitute therefor, and such original specification shall be of no effect. All provisions of this indenture concerning any such pledge of bonds or stock or any issue or certification of bonds secured by this indenture in respect thereof shall be construed and applied in accordance with such corrected statement.

Execution of mortgage in counterparts.

In order to facilitate the record of this indenture, the same may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

In witness whereof, the Reading Company, the party hereto of the first part, and The Philadelphia and Reading Coal and Iron Company, the party hereto of the second part, have each caused this indenture to be signed and acknowledged or proved by its President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary; and Central Trust Company of New York, the party of the third part, has caused its corporate seal to be hereunto affixed and attested by its Secretary, and

these presents to be signed and acknowledged or proved by its Second Vice-President the day and year first above written.

READING COMPANY,

Seal of Reading Company.

By

J. S. HARRIS,

President.

Attest:

W. G. BROWN,

Secretary.

THE PHILADELPHIA AND READING COAL AND IRON COMPANY,

Seal of P. & R. Coal & Iron Co.

By

J. S. HARRIS,

President.

Attest:

T. P. KAERCHER,

Secretary.

Signed, sealed and delivered on behalf of the Companies in the presence of

W. G. BROWN.

T. P. KAERCHER.

CENTRAL TRUST COMPANY OF NEW YORK,

Seal of Central Trust Co. of N. Y.

By

E. FRANCIS HYDE,

2d Vice-President.

Attest:

C. H. P. BABCOCK,

Secretary.

Signed, sealed and delivered on behalf of Central Trust Company of New York in the presence of

F. B. SMEDT.

F. L. GRANT.

COMMONWEALTH OF PENNSYLVANIA, } ss.:
City of Philadelphia, }

On the 6th day of March, 1897, before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared W. G. Brown, Secretary of the above-named Reading Company (he being one of the subscribing witnesses to the sealing and delivery of the above indenture), who, being by me duly sworn according to law, did depose and say: That he was present at the execution of the said indenture, and did see Joseph S. Harris, the President of said corporation, affix the common or corporate seal of the said Reading Company thereto, and subscribe his name as President in attestation thereof; that the seal so affixed is the common or corporate seal of the said corporation, and that the said seal was so affixed, and the said indenture was duly sealed and delivered by the said President, as the act and deed of the said corporation, for the uses and purposes therein mentioned, in pursuance of a resolution of the Board of Directors duly passed at a meeting thereof, held the 23d day of December, A. D. 1896; that he saw F. P. Kaercher, the said subscribing witness, sign his name to the said indenture; and that the name of this deponent, subscribed to said indenture as Secretary of the said Company, in attestation of the due execution and delivery of the said indenture, and also subscribed as a witness to the sealing and delivery thereof, are of his (this deponent's) own handwriting.

W. G. BROWN.

Sworn and subscribed before me. }
Witness my hand and notarial }
seal the day and year aforesaid. }

C. K. KLINK,
Notary Public.

Seal of C. K. Klink, N. P.

COMMONWEALTH OF PENNSYLVANIA, }
City of Philadelphia, } ss.:

On the 6th day of March, 1897, before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared F. P. Kaercher, Secretary of the above-named The Philadelphia and Reading Coal and Iron Company (he being one of the subscribing witnesses to the sealing and delivery of the above indenture), who, being by me duly sworn according to law, did depose and say: That he was present at the execution of the said indenture, and did see Joseph S. Harris, the President of said corporation, affix the common or corporate seal of the said The Philadelphia and Reading Coal and Iron Company thereto, and subscribe his name as President in attestation thereof; that the seal so affixed is the common or corporate seal of the said corporation, and that the said seal was so affixed, and the said indenture was duly sealed and delivered by the said President, as the act and deed of the said corporation, for the uses and purposes therein mentioned, in pursuance of a resolution of the Board of Directors duly passed at a meeting thereof, held the 23d day of December, A. D. 1896; that he saw W. G. Brown, the said subscribing witness, sign his name to the said indenture; and that the name of this deponent, subscribed to said indenture as Secretary of the said Company, in attestation of the due execution and delivery of the said indenture, and also subscribed as a witness to the sealing and delivery thereof, are of his (this deponent's) own handwriting.

F. P. KAERCHER.

Sworn and subscribed before me. }
Witness my hand and notarial }
seal the day and year aforesaid. }

C. K. KLINK,
Notary Public.

Seal of
C. K. Klink,
N. P.

STATE OF NEW YORK,
City and County of New York, } ss.:

On the eighth day of March, in the year 1897, before me personally came E. Francis Hyde, to me known, and who, being by me duly sworn, did depose and say that he resided in the City of New York; that he was the 2d Vice-President of Central Trust Company of New York, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to such instrument was such corporate seal; that it was so affixed by authority of the Board of Trustees of said corporation, and that he signed his name thereto by like authority.

FRANK B. SMEDT,
Notary Public,
N. Y. Co.

Seal of
Frank B. Smedt,
N. P.

STATE OF NEW YORK,
City and County of New York, } ss.:

I, HENRY D. PURROY, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, DO HEREBY CERTIFY, that Frank B. Smedt, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the City and County of New York, dwelling in the said City, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 9th day of March, 1897.

HENRY D. PURROY,
Clerk.

New York
Seal.

Government's Counsel offer in evidence **Mortgage by Philadelphia and Reading Railway Company to Central Trust Company of New York,** dated November 18, 1896, as follows:

An Indenture, Made the eighteenth day of November, 1896, by and between the

PHILADELPHIA AND READING RAILWAY COMPANY, a corporation created by and existing under the laws of the State of Pennsylvania, and owning railroads and leasehold estates hereinafter described (hereinafter called the Railway Company), party of the first part; and the

CENTRAL TRUST COMPANY OF NEW YORK, a corporation created by and existing under the laws of the State of New York (hereinafter called the Trustee), party of the second part:

WHEREAS, The Railway Company has acquired various railroads and properties by transfer thereof from Charles H. Coster and Francis Lynde Stetson, upon the express promise and agreement of the Railway Company, among other things, to make, execute and issue its bond for the principal sum of $20,000,000, payable January 1, 1997, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of July and January in each and every year, such principal and interest being payable in gold coin of the present standard of weight and fineness, to be delivered to the said Coster and Stetson jointly and not severally, or to their survivor and successors; and also from time to time to make, execute and issue its further and additional bonds for the additional aggregate principal sum of $10,000,000, with like interest, to be used in part payment for new acquisitions, constructions and betterments upon the railroads and property of the Railway Company, all as herein provided; and

WHEREAS, The Board of Directors of the Railway Company, at a meeting thereof held at the Reading Terminal in the City

of Philadelphia, on this 18th day of November, in the year 1896, adopted resolutions authorizing and directing the President and the Secretary of the Railway Company, in its name and behalf, and under its corporate seal, to make, execute and deliver to the Central Trust Company of New York, as Trustee, a mortgage in this form then submitted to such meeting, upon all its present and future acquired property and franchises (except as herein otherwise stated) to secure such bond for $20,000,000 and interest, and also further and additional bonds for the additional aggregate principal sum of $10,000,000, with like interest; and

WHEREAS, Pursuant to said authority and direction, the President and the Secretary of the Railway Company this day have executed and have delivered to the said Coster and Stetson the bond of this Company for $20,000,000, dated November 18, 1896, and payable January 1, 1997, with interest at the rate of six per cent. per annum payable semi-annually as provided in said resolution; and

WHEREAS, On this 18th day of November, 1896, all the stockholders of the Railway Company owning and holding every share of its capital stock, viz., 400,000 shares of the par value of $50 each, did in writing assent to and approve of the said proceedings of the Board of Directors of the Railway Company, and particularly the execution and delivery of the said bond and mortgage, as so authorized at the said meeting of the Board of Directors of the Railway Company, which consent is in writing and is subscribed to the original minutes of said meeting; and

WHEREAS, In pursuance of said resolutions and consent, and of all and every legal power and authority in it vested, the Railway Company having made, executed and delivered the said bond for $20,000,000, proposes also to make and execute, and from time to time hereafter to issue and deliver bonds for

the additional aggregate principal sum of $10,000,000 as above set forth, all to be secured hereby;

Now, therefore, this Indenture witnesseth:

That in order equally and proportionately to secure the payment of the principal and interest of the said bond of twenty million dollars ($20,000,000), heretofore executed and delivered, and of all bonds for the additional aggregate principal sum not exceeding $10,000,000 at any time outstanding and lawfully issued as provided in such bonds and in this indenture, and also the performance of all covenants and conditions herein contained, and to declare the terms and conditions upon which such bonds are issued and received, the Railway Company, party of the first part, in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents with all the covenants and conditions therein, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over, unto the Trustee, party of the second part, its successors and assigns forever:

ALL THE ESTATE, RIGHT, TITLE AND INTEREST, OF EVERY NAME AND NATURE, OF THE RAILWAY COMPANY OF IN AND TO the following property, railroads and franchises, viz.:

1. The Main Line, extending from its termini at Port Richmond and Willow street wharf, on the Delaware river, in the city of Philadelphia, through the Schuylkill valley, via Reading, to its junction with the Mount Carbon Branch, at Mount Carbon, near Pottsville, in the county of Schuylkill (including the Tabor Branch extending from its connection with the Main Line at Nicetown to its connection with the North Pennsyl-

vania Railroad at Tabor Junction. The Venice Branch from its connection with the Main Line near Pencoyd to East Manayunk, the Bellevue Branch from its connection with the Norristown Railroad at Bellevue Station to East Falls; also Linden St. Yard, in Camden, N. J., connected by floats with Port Richmond, Philadelphia, Pa.), being one hundred and four and forty-four one-hundredths miles in length of double track, and two and eight one-hundredths miles in length of single track railroad, and embracing with its sidings and turnouts four hundred and forty-one and seventy-six one-hundredths miles of single track.

2. The Lebanon Valley Branch, extending from its junction with the said main line at Reading, in the county of Berks, through the Lebanon valley, via Lebanon to Harrisburg, in the county of Dauphin, including the Avon Branch from its connection with the Lebanon Valley Railroad east of Lebanon Station to Brock's furnaces; the Manufacturers' Branch from its connection east of Harrisburg to Harrisburg Car Works and the Steelton Branch from its connection east of Harrisburg to Steelton, Pa., being fifty-nine and twenty-nine one-hundredths miles in length, of which forty-five and nine-tenths miles are double track, and embracing, with its sidings and turnouts, one hundred and forty and eighty-eight one-hundredths miles of single track.

3. The Lebanon and Tremont Branch, extending from its junction with the said Lebanon Valley Branch at Lebanon, in the County of Lebanon, via Pine Grove to its termini at Brookside in the said County of Schuylkill, including the Lorberry Branch from its connection with the Lebanon and Tremont Branch at Lorberry Junction to Clark's Valley; the Good Spring Branch from its connection with the Lorberry Branch at Good Spring Junction to Good Spring breaker, being sixty-five and twenty-eight one-hundredths miles in length, and embracing, with its sidings, seventy-five and fifty-seven one-hundredths miles of single track.

4. The Mahanoy and Shamokin Branch, extending from its junction with the railroad of the Mile Creek and Mine Hill Navigation Railroad Co., near Newcastle, and from a point three hundred and sixty-five feet south of Mahanoy City Sta., in the said County of Schuylkill, via Mahanoy Plane and Ashland to Locust Dale, in the County of Columbia, and from a connection with the Mine Hill and Schuylkill Haven Railroad, at Locust Summit, via Shamokin, Trevorton and Herndon to its terminus at Port Trevorton, on the Susquehanna river, in the County of Snyder, including the Mahanoy City colliery branch, Elmwood colliery branch, Mahanoy City Jig House branch, Tunnel Ridge colliery branch, Fuel Plant branch, Knickerbocker colliery branch, Ellangowan colliery branch, Yatesville Washery branch, Bear Run colliery branch, Boston

Run colliery branch, Draper colliery branch, Gilberton colliery branch, Snyder Coal Co. branch, Lawrence colliery branch, Shenandoah branch, West Bear Ridge colliery branch, Hammond Branch, Hammond colliery branch, Girard Mammoth colliery branch, Old Locust Creek colliery branch, William Penn colliery branch, Turkey Run colliery branch, Kohinoor colliery branch, Shenandoah City colliery branch, Old Plank Ridge colliery branch, Indian Ridge colliery branch, Kehley Run colliery branch, Girard colliery branch, Preston No. 3 colliery branch, Potts colliery branch, Helfenstein branch, Monitor colliery branch, Alaska colliery branch, Mount Carmel branch, Reliance colliery branch, Mount Carmel colliery branch, Old Alaska Shaft branch, Enterprise colliery branch, Excelsior colliery branch, Old Greenback colliery branch, Buck Ridge colliery branch, Garfield colliery branch, Big Mountain colliery branch, Henry Clay colliery branch, Carbon Run branch, Burnside colliery branch, Herndon branch, North Franklin No. 2 colliery branch and North Franklin No. 1 colliery branch, being ninety-three and seventy-nine one-hundredths miles in length, of which twenty-six and one-tenth miles are double track, and embracing, with its sidings, one hundred and eighty-six and twenty-four one-hundredths miles of single track railroad.

5. The Mount Carbon branch, which extends from its junction with the said main line at Mount Carbon, in the said county of Schuylkill, to its termini at Mount Laffee and Wadesville, in the same county, being seven and forty-four one-hundredths miles in length, of which one and forty-five one-hundredth miles are double track, and embracing, with its branches and sidings, eighteen and thirty-three one-hundredth miles of single track railroad.

6. The Schuylkill and Susquehanna Branch, extending from its junction with the said main line at Auburn, in the said county of Schuylkill, to its junction with the Pennsylvania Railroad at Rockville, in the said county of Dauphin, being fifty-three and four-tenths miles in length, and embracing, with its branches, sidings and turnouts, sixty-two and seven-tenths miles of single track.

7. The Port Kennedy Branch, extending from its junction with the said main line at Port Kennedy, in the County of Montgomery, one and two-tenths miles in length and embracing, with its sidings and turnouts, one and three-tenths miles of single track;

8. The West Reading Branch, extending from its junction with the said Lebanon Valley Branch, in and through the City of Reading, in the county of Berks, to the foot of Sixth street, in said city two and seventeen one-hundredths miles in length, and embracing with its sidings and turnouts, five and twenty-five one-hundredths miles of single track;

9. The Moselem Branch, extending from its junction with the said main line at Leesport, in Berks county, and reaching with a lateral the Leesport Iron Company's furnace, one and nine-tenths miles in length, and embracing, with its laterals and sidings, a distance of two and six-tenths miles of single track;

10. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for nine hundred and ninety-nine years from the first day of December, 1870, in pursuance of a lease dated November 10th, 1870, duly recorded) of, in and to the Philadelphia, Germantown and Norristown Railroad, which extends from its junction with the said main line at Ninth and Willow streets, in the said city of Philadelphia, to its termini at Norristown, in the said county of Montgomery, and Germantown, in the county of Philadelphia, being twenty and five-tenth miles in length of which twenty and two-tenths miles are double-track railroad, and embracing, with its sidings and turnout, seventy-nine and sixty-two hundredths miles of single track.

11. Also, all the estate, right title and interest of the party of the first part (being a leasehold interest of nine hundred and ninety-nine years from the first day of December, 1870, in pursuance of a lease dated November 10th, 1870, duly recorded) of, in and to the Plymouth Railroad, which extends from its junction with the said Philadelphia, Germantown and Norristown Railroad, at Conshohocken, in the said county of Montgomery, to its junction with the North Pennsylvania Railroad at Oreland in said county, being eight and nine-tenths miles in length, and embracing with its turnouts and sidings, twelve and twenty-three hundredths miles of single track.

12. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for twenty years from the first day of January, 1870, in pursuance of a lease dated 17th January, 1870), of, in and to the Colbrookdale Railroad which extends from its junction with the said main line at Pottstown, in the said county of Montgomery, through the valley of the Manatawny to Mount Pleasant, now Barto, in the said county of Berks, being twelve and nine-tenth miles in length, and embracing, with its sidings and turnouts, fifteen and nine-tenths miles of single tracks.

13. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for nine hundred and ninety-nine years, from the first day of May, 1869, in pursuance of a lease dated May 19th, 1869, duly recorded) of, in and to the East Pennsylvania Railroad which extends from its junction with the said main line at Reading, in the said County of Berks to its present terminus at Allentown, in the county of Lehigh, being thirty-five and thirty-three one-hundredths miles in length, of which eighteen and twenty-three one-hundredths miles are double-track railroad, embracing

with its sidings and laterals, seventy-one and eight one-hundredths miles of single track.

14. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for nine hundred and ninety-nine years from the twenty-fifth day of July, 1861, in pursuance of a lease of that date), duly recorded of, in and to the railroad of the Schuylkill Valley Navigation and Railroad Company which extends from its junction with the Mount Carbon and Port Carbon Railroad near Port Carbon in the said county of Schuylkill, to its junction with the railroad of the said Little Schuylkill Navigation, Railroad and Coal Company, near Reevesdale, in the same county, including Brockville branch, Eagle Hill branch, Silver Creek branch, Big Vein branch and Coal Hill branch, being sixteen and twenty-nine one-hundredth miles in length, of which five and fourteen one-hundredth miles are double track railroad, embracing, with its sidings and turnouts, twenty-six and sixty-seven one-hundredth miles of single track.

15. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for nine hundred and ninety-nine years from the twenty-fifth day of July, 1861, in pursuance of a lease of that date, duly recorded) of, in and to the railroad of the Mill Creek and Mine Hill Navigation and Railroad Company, which extends from its junction with the said Mount Carbon and Port Carbon Railroad near Port Carbon, in the said county of Schuylkill, to its junction with the said Mahanoy and Shamokin Branch at or near New Castle, in the same county, including North American branch, Crow Hollow branch, John's branch and Jones' branch, being six and sixty-two one-hundredth miles in length, of which three and eight-tenth miles are double track and embracing with its sidings and turnouts twenty-nine and four-tenth miles of single track.

16. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for fifty years from the fifth day of March, 1860, in pursuance of a lease of that date, duly recorded) of, in and to the said Mount Carbon and Port Carbon Railroad, which extends from its junction with the said main line near Mount Carbon, in the said county of Schuylkill, to its junction with the railroads of the said Mill Creek and Mine Hill and the Schuylkill Valley Navigation and Railroad Companies at or near Port Carbon, in the same county, including Port Carbon branch from Port Carbon valley scales to Allisons shops, being two and ninety-six one-hundredth miles in length, of which two and fifty-four one-hundredth miles are double track, and embracing with its sidings and turnouts nineteen and thirteen one-hundredth miles of single track.

17. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for the term of nine hundred and ninety years from the first day of May, A. D. 1879, in pursuance of a lease from the North Pennsylvania Railroad Company bearing date the fourteenth day of May, A. D. 1879, duly recorded), of, in and to the main line of the Railroad of the North Pennsylvania Railroad Company, extending from its terminus in Philadelphia at Willow street to Bethlehem, in the county of Lehigh, being fifty-five and fifty-seven hundredths miles in length, of which fifty-four and five-tenths miles are double track railroad, and embracing with its sidings and laterals, other than the two branches hereinafter mentioned, one hundred and fifty-three and thirty-one hundredths miles of single track, and the branches of said main line of the North Pennsylvania Railroad known and designated in said lease as the "Delaware River Branch" and "Doylestown Branch," the former extending from its connection with the said main line of the North Pennsylvania Railroad at Jenkintown, in the county of Montgomery and State of Pennsylvania, to its connection with the railroad of the Delaware and Bound Brook Railroad Company at the centre of the bridge crossing the river Delaware near Yardley, in the county of Bucks and State aforesaid, being twenty and five- tenths miles in length of double-track railroad, and embracing, with its sidings and laterals, fifty-two and one-tenth miles of single track, and the latter extending from its connection with said main line at Lansdale, in the said county of Montgomery, to Doylestown, in the said county of Bucks, being ten and fifteen hundredths miles in length, and embracing, with its sidings and turnouts, eleven and seventy-six hundredths miles of single track.

18. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for the term of nine hundred and ninety years from the first day of May, A. D. 1879, in pursuance of a lease from the Delaware and Bourd Brook Railroad Company, bearing date the fourteenth day of May, A. D. 1879, duly recorded), of, in and to the railroad of the said Delaware and Bound Brook Railroad Company, extending from its connection with the Delaware River Branch of the North Pennsylvania Railroad, at the centre of the bridge crossing the Delaware river near Yardley, to Bound Brook Junction, in the county of Somerset, State of New Jersey, together with the branch railroad known as the Trenton Branch, extending from its connection with the main line of said railroad, at a point known as Trenton Junction, in the county of Mercer, in the State of New Jersey, to Trenton in said State, three and seven-tenth miles in length, being thirty and eighty-one hundredths miles in length, of which twenty-seven miles are double track, and embracing with its sidings and laterals, seventy-three and fourteen hundredths miles.

19. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for the term of twenty-nine years from the first day of September, A. D. 1871, in pursuance of a lease dated January 18th, 1872, duly recorded of, in and to the railroad of the Pickering Valley Railroad Company, extending from its junction with the main line aforesaid, at Phœnixville, in the county of Chester, to Byers Station, a distance of eleven and three-tenths miles, and embracing with its laterals and sidings, twelve and four-tenths miles of single track.

20. Also, all the estate, right, title and interest of the parties of the first part (being a leasehold interest for the term of nine hundred and ninety-nine years from the first day of July, A. D. 1873, in pursuance of a lease from the Philadelphia, Wilmington and Baltimore Railroad Company, bearing date the first day of July, A. D. 1873, duly recorded), of, in and to the railroad known as the Philadelphia and Chester Branch, extending from Gray's Ferry, in the city of Philadelphia, to Eddystone, in the county of Delaware, a distance of nine and eight-tenths miles in length, and embracing, with its sidings and turnouts, fifteen miles of single track.

21. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for nine hundred and ninety-nine years from the first day of May, Anno Domini one thousand eight hundred and eighty-three, in pursuance of a lease of the eleventh day of April, one thousand eight hundred and eighty-three, duly recorded), of, in and to The Schuylkill and Lehigh Railroad, which extends from its southern terminus at its junction with The Wilmington and Northern Railroad, on Ezra High's farm in Cumru Township, Berks County, to its northern terminus at or near Slatington, in Lehigh County, Pennsylvania, being forty-four miles in length and embracing, with its sidings and turnouts, forty-nine and twenty-four hundredths miles of single track.

22. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for nine hundred and ninety-nine years from the second day of July, Anno Domini one thousand eight hundred and eighty-three, in pursuance of a lease of that date), of, in and to The Shamokin, Sunbury and Lewisburg Railroad, which extends from Carbon Run Junction to West Milton Junction, in the State of Pennsylvania, being thirty-one and twenty eight hundredths miles in length, of which fourteen and eighty one-hundredths miles are double track, and embracing, with its sidings and turnouts, fifty-eight and eight one-hundredths miles.

23. Also all the estate, right, title and interest of the party of the first part (being a leasehold interest for a term of nine hundred and ninety-nine years from the fifteenth day of October, A. D. eighteen hundred and ninety, in pursuance of

a lease from the Philadelphia, Harrisburg and Pittsburgh Railroad Company, bearing date the fifteenth day of October, A. D. eighteen hundred and ninety, to The Philadelphia and Reading Railroad Company, duly recorded) of, in and to the railroads of the Philadelphia, Harrisburg and Pittsburgh Railroad Company, the main line of which extends from its terminus at Harrisburg, in the County of Dauphin, to Shippensburg, in the County of Cumberland, including the Philadelphia and Reading ore branch of the Cleversburg branch, being forty-five and fifty-eight one-hundredths miles in length, and embracing, with its sidings and turnouts, fifty-six and forty-eight one-hundredths miles of single track.

24. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for a term of nine hundred and ninety-nine years from the first day of May, eighteen hundred and ninety-one, in pursuance of a contract and agreement made between the Philadelphia and Reading Terminal Railroad Company, The Philadelphia and Reading Railroad Company and the Provident Life and Trust Company, of Philadelphia, Trustee, bearing date the first day of May, A. D. eighteen hundred and ninety-one, duly recorded) of, in and to the Philadelphia and Reading Terminal Railroad, which extends from its connection with the Philadelphia, Germantown and Norristown Railroad at Fairmount Avenue, and from its connection with the Main Line of the Philadelphia and Reading Railroad Company at Broad Street, to its terminus at Twelfth and Market Streets, within the City of Philadelphia, being one and three-tenths miles in length of double track, and embracing, with its sidings and turnouts, five and sixty-eight one-hundredths miles of single track.

25. Also, all the estate, right, title and interest of the party of the first part (being a leasehold interest for nine hundred and ninety-nine years from the tenth day of July, 1889, in pursuance of a contract and agreement made between the Allentown Terminal Railroad Company, the Lehigh Coal and Navigation Company and The Philadelphia and Reading Railroad Company, bearing date the tenth day of July, 1889, duly recorded) of, in and to the Allentown Terminal Railroad, extending from its point of connection with the Lehigh and Susquehanna Railroad in Hanover Township, Lehigh County, crossing the Lehigh River and Kline's Island, in and through Saulsburg Township, to the City of Allentown, and crossing the Lehigh River, to its northern connection with the Lehigh and Susquehanna Railroad, and also the branch from a point near the Barber Branch of the Lehigh Valley Railroad to a connection with the East Pennsylvania Railroad, and another branch from the connection with the East Pennsylvania Railroad to the main line of the Allentown Terminal Railroad, being three and one-third miles in length.

AND, ALSO, ALL THE RIGHT, TITLE AND INTEREST HEREAFTER TO BE ACQUIRED by the Railway Company (by lease or otherwise) in or to the property, railroad or franchises of the following five railroad corporations of the State of Pennsylvania, viz:

(26) Mine Hill and Schuylkill Haven Railroad Company.

(27) Catawissa Railroad Company.

(28) Little Schuylkill Navigation, Railroad and Coal Company, including

(29) the East Mahanoy Railroad Company.

(30) Chestnut Hill Railroad Company.

BEING a part of the same railroads and interests in railroads conveyed to the said Charles Henry Coster and Francis Lynde Stetson, by the deed of the Pennsylvania Company for Insurances on Lives and Granting Annuities, as Trustee, dated the twenty-third day of October, one thousand eight hundred and ninety-six, and by the deed of The Philadelphia and Reading Railroad Company to said Charles Henry Coster and Francis Lynde Stetson, bearing date the twenty-third day of October, one thousand eight hundred and ninety-six, as by reference to said deeds, duly recorded will more fully and at large appear; and by said Coster and Stetson conveyed to the party of the second part hereto by deed dated November 16th, 1896, and delivered to and accepted by the Railway Company November 17th, 1896, and this mortgage being given to secure part of the purchase price stated in such last-named conveyance:

ALSO ALL THE RIGHT, TITLE, ESTATE, INTEREST, PROPERTY and franchises of the Railway Company of, in and to any and all other lines of railway, extension and branches, now owned, leased or held by the Railway Company, or in which it has any interest whatsoever, wherever located, notwithstanding the same may not be particularly set forth or described in this indenture:

INCLUDING any and all roadbed, superstructure, rights of way, rails, tracks, sidetracks, bridges, viaducts, buildings, depots, stations, warehouses, car-houses, engine houses, freight-houses, coal-houses, wood-houses, machine shops and other

shops, turn-tables, water-stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind in any wise or at any time belonging or appertaining to any line of railway, or to any branch, operated line or leasehold, at any time subject to the lien of this indenture, or provided for use thereon, or in connection therewith; and any and all lands designed for depots, warehouses or other structures at any terminus, or upon and along such lines of railway, or upon or along any such branch, operated line or leasehold; and any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels wheresoever situated, now or hereafter held, or acquired by the Railway Company for use upon such lines of railway or branches, or upon any other line or branch, or upon any operated line or leasehold; and any and all leaseholds, leases, rights under lease, or contracts, covenants and agreements, terms or parts of terms and any and all other property, real or personal, of every kind and description, now or hereafter acquired by the Railway Company for use upon or in connection with, or for the purpose of, such lines of railway branches or operated lines or leaseholds at any time subject to the lien hereof; and any and all corporate or other rights, privileges and franchises which the Railway Company now has, or hereafter shall acquire, possess or exercise for, or appertaining to, the construction, maintenance use or operation of such lines of railway or branches or operated lines or leaseholds or any part thereof; and any and all the rents, issues, profits, tolls and other income of such lines of railway, or branches or operated lines or leaseholds, or any part thereof and of any and all the rights, privileges, franchises, properties, real or personal, rights and things which the Railway Company may or shall hereafter possess or become entitled to possess, for the purpose of, or in connection with such lines of railway or any such branch or operated line or any such leasehold:

INCLUDING also all franchises, lines of railway, extensions branches, telegraph lines and other property, which have been conveyed or sold to the Railway Company by the said Charles H. Coster and Francis Lynde Stetson, in their deed dated November 16, 1896; and also all stocks, bonds, certificates of indebtedness, claims and other property of every name and nature now owned or hereafter acquired by the Railway Company, which by any provision of this indenture it is required to pledge, assign or transfer to the Trustee; and also all the right, title, interest and property which the Railway Company now has, or at any time hereafter may acquire, in or to any of the property, real, personal or mixed, hereby mortgaged, conveyed and assigned, or intended so to be; and

ALSO, all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railway Company or by any one in its behalf to the Trustee, which is hereby authorized to receive any property at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of bonds issued or to be issued hereunder, and to hold and apply any and all such property subject to the terms hereof.

To have and to hold, the premises, railroads, properties real or personal, rights, franchises, estates, appurtenances, stocks and bonds hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustee, its successor or successors and assigns forever.

But in trust, nevertheless, for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued and to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest obligations, when payable, and the performance of and compliance with, the

covenants and conditions of this indenture; without preference, priority or distinction as to lien or otherwise of any one bond over any other bond by reason of priority in the issue or negotiation thereof, so that each and every bond, issued and to be issued as aforesaid, shall have the same right, lien and privilege under and by this indenture, and that the principal and interest of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby, as if all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security of this indenture shall take effect from the day of the date hereof without regard to the date of actual issue, sale or disposition of said bonds, and as though, upon this day, all of said bonds were actually issued, sold and delivered to, and in the hands of innocent holders for value.

And it is hereby expressly covenanted that all such bonds and the coupons for interest thereon are to be issued, certified and delivered, and that the mortgaged premises are to be held by the Trustee, subject to the further covenants, conditions, uses and trusts hereinafter set forth; and it is covenanted between the parties hereto as follows, viz.:

Article One

Section 1. All bonds to be secured hereby shall, from time to time, be executed and delivered by the Railway Company to the Trustee for certification, and thereupon the Trustee shall certify and deliver the same as provided in this Article, and not otherwise. The aggregate principal sum of the bonds issued and outstanding under this indenture at any one time shall never exceed $30,000,000.

Only such bonds as shall be duly authenticated by the Trustee's certificate by it duly executed shall be secured by

this indenture or shall be entitled to any lien or benefit hereunder; and every such certificate of the Trustee upon any bond executed in behalf of the Railway Company shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trust hereby created. On request of the Railway Company such certificate shall be made and bonds shall be delivered hereunder, in advance of registration or record of this indenture, but the Railway Company shall cause record of this indenture as a mortgage upon real estate to be made with all convenient speed.

The Trustee shall not certify or deliver any registered bonds bearing interest from any date more than six months prior to such certification or delivery.

SEC. 2. Of the bonds authorized to be issued under and secured by this indenture, one bond for the principal sum of twenty million dollars ($20,000,000), immediately upon the execution or delivery hereof, or as soon as may be thereafter, shall by the Trustee be certified and delivered to Charles H. Coster and Francis Lynde Stetson, jointly and not severally, or their survivor or successors, without accountability by them, or such survivor or successors, for the disposition or use thereof, and from time to time thereafter, at the joint request of the said holder of such bond for the time being and of the Railway Company, the Trustee, by endorsement upon such bond, may cancel in whole or in part the sum payable thereon, and to the extent of such cancellation may certify bonds of like tenor and date, but of smaller denomination, in sums of $1,000 or of some multiple thereof; and may deliver such substitute bonds according to the written directions contained in such joint request for such cancellation.

SEC. 3. The remainder of the authorized issue hereunder, amounting to $10,000,000 of said bonds, shall be reserved, to

be executed, and to be certified by the Trustee, when and as called for by resolution of the Board of Directors as next hereinafter provided, but only that the same from time to time may be used, and may be delivered to the Reading Company to reimburse it for one-half of the amount of the advances by it theretofore actually made subsequent to January 1, 1897, at the request, or with the approval, of the Railway Company, for the following purposes, or for some one or more of them, viz.:

For the construction or acquisition, on and after January 1st, 1897, of branch lines, extensions, terminal properties, rolling stock or other additional property; or for the construction of betterments, subsequent to said date; all such construction, or betterments, or property acquired, to be upon, along or appurtenant to lines of railway, branches or terminal properties of the Railway Company, at the time of such use subject to the lien of this indenture, or upon, along, or appurtenant to one or more of the leasehold estates hereinabove specifically granted hereunder whether now held or hereafter acquired; it being intended that such branch lines, extensions or terminal properties or other new property may be constructed or acquired by and in the name of the Railway Company, or by or for account of any lessor of any of the said leasehold estates specifically granted hereunder.

THE BONDS RESERVED UNDER THIS SECTION 3 (ARTICLE ONE, shall be certified by the Trustee and delivered to the Railway Company, or upon its order, as follows, and not otherwise, viz.:

(1) Such bonds shall be certified and delivered by the Trustee only as and when it shall receive a copy of a resolution of the board of directors of the Railway Company, certified by its Secretary or Assistant Secretary, calling for the certification and delivery of such bonds, and stating that such bonds are required and are to be used only for the purposes authorized by this Section.

(2) In each calendar year after December 31, 1896, there shall be so certified and delivered such amount not exceeding $1,500,000 par value of such bonds, as from time to time, shall be called for in such resolutions (the bonds to be in sums of $1,000 or such multiples thereof as the Railway Company shall require); but in every instance, before certifying and delivering any of the bonds reserved under this Section, the Trustee shall require the Railway Company to furnish, in addition to such resolution of the Board, the verified certificate or certificates of some person or persons, stating as of his or their own knowledge:

(*a*) that the bonds called for in such resolution are required, and are to be used, to reimburse the Reading Company as above provided for not more than one-half of the amount of its advances theretofore so made for such purposes, or for some one or more of them, specifically indicating every acquisition or construction of any railroad, track, structure, betterment, rolling stock or other property, for which such advances shall have been so made by the Reading Company, which acquisition or construction in every instance shall at the date of such certificate either be actually owned by the Railway Company, or shall then be connected with and attached to one or more of the said leasehold estates above specified in the granting clauses of this indenture; and such certificates also shall state in detail the amount of bonds to be applied in reimbursing the Reading Company for each and every such purpose, and whether such acquisition or construction was by or in the name of the Railway Company, or was by or for account of any lessor as herein authorized; and also that neither any advance by the Reading Company nor any acquisition, construction or expenditure in such certificate stated has been included or allowed for in any previous certificate;

(*b*) that no part of the sums so advanced on account of any of said leasehold estates can be collected in money from

the lessor thereof under the terms of the lease thereof as now existing or hereafter modified;

(*c*) That the price to be paid in such bonds, to reimburse the Reading Company for its advance for such construction or acquisition, does not exceed one-half of the fair value of such work done or property acquired, estimating such bonds at the fair market price which, as nearly as may be at the time of determining such price, the Reading Company shall have realized for its own four per cent. general mortgage bonds now about to be created;

(*d*) that the bonds delivered to the Railway Company pursuant to the resolution last preceding the delivery of such present resolution and certificate have been actually and duly delivered to the Reading Company to reimburse it for not more than the one-half of the advances by it made in respect of which such last preceding certificate shall have been made.

(*e*) In case of the acquisition hereunder of any new property, every such verified certificate also shall state whether the property so acquired is known, or believed, to be subject to any lien, or charge or ownership, prior to this indenture, other than (1) outstanding old bonds now existing on the property of the Railway Company as such bonds now exist or shall hereafter be extended, or as bonds shall be issued in renewal thereof; or (2) bonds then existing upon any property then held by the Railway Company by virtue of some lease above specified in the granting clauses hereof, or of some modification thereof or substitute therefor made, as herein permitted; or (3) the interest of any of the said lessors in any such new property connected with any such leasehold estate; or (4) mortgage bonds, or other liens, or charges held by the Trustee, or in respect of which, as hereinafter provided, bonds shall have been reserved hereunder; or (5) undetermined liens or charges incidental to construction; or (6) ordinary operating accounts; and the amount of any such prior lien or

charge (other than as aforesaid) known or believed to exist shall be specifically stated in such verified certificate.

(*f*) Any such verified certificate under this Section may state any other facts pertaining to the right to certify and to deliver bonds hereunder.

(3) The Railway Company shall not by use of any such bonds reserved under this Section reimburse the Reading Company for any advances by it made in any one year to enable the Railway Company to acquire or to construct new property, if such new property acquired or constructed in such year, shall be subject to any ownership prior to this indenture, or to any lien, or charge prior hereto, which shall in the aggregate exceed $2,000,000, excepting, however, (1) old bonds now existing on the property of the Railway Company as such bonds now exist or shall herafter be extended, or as bonds shall be issued in renewal thereof: or (2) bonds or other liens then existing upon any property then held by the Railway Company by virtue of some lease above specified in the granting clauses of this indenture or of some extension, renewal or substitution of some such lease: or (3) the interest of any of said lessors in any such new property connected with any such leasehold estate, or (4) mortgage bonds or other liens held by the Trustee, or in respect of which, bonds shall have been reserved hereunder: or (5) undetermined liens or charges incidental to construction: or (6) ordinary operating accounts.

(4) In case such bonds shall be used to reimburse the Reading Company for any part of its advances made to enable the Railway Company to acquire any property subject to any such certified lien, charge or indebtedness (not including, however, liens, charges and indebtedness of the six classes above excepted), then, during the continuance of such lien, charge or indebtedness, there shall be reserved out of the bonds set apart under this Section an amount at par equivalent to such certified liens, charges or indebtedness; and the bonds so reserved shall be taken from the $1,500,000 bonds under this Sec-

tion deliverable in such calendar year, or in the next two succeeding calendar years, as may be agreed between the Railway Company and the Trustee. After such reservation, the bonds so reserved shall, from time to time, be executed and certified upon the order of the Railway Company and delivered only when and as, from time to time, such certified liens, charges or indebtedness shall be retired or acquired in amounts equivalent at least to the par amount of the bonds certified and delivered therefor, and all the liens, charges or indebtedness so retired or acquired shall be canceled, or, if practicable, shall be assigned to and held by the Trustee in such a manner as, in its judgment, shall best protect the holders of the bonds hereby secured.

(5) Every such verified certificate, unless signed (*a*) by the President or one of the Vice-Presidents, and (*b*) by the Comptroller, or Auditor, or Treasurer, of the Railway Company, shall be accompanied by a written statement of one of the officers first-above designated and also one of the officers secondly-above designated that they believe such certificate to be true, and that no part of the expenditures therein certified represents ordinary maintenance of the railway or other property owned, leased or in any way controlled by the Railway Company, or replacements or other purposes ordinarily treated by railroad companies as a part of their operating expenses. Together with such statements and verified certificates, there shall be delivered to the Trustee such further instruments and conveyances (except in respect of additions to property in which a leasehold estate is hereinabove granted hereunder), as may be necessary to vest in the Trustee, so far as practicable, all new property so acquired, and, so far as may be, any and all other liens, charges or indebtedness taken up or acquired by means of advances from the Reading Company reimbursed to it partly by means of the said bonds; and also the written opinion of counsel of the Railway Company to the effect that such instruments and conveyances are

sufficient for that purpose, or that no additional instrument or conveyance is necessary. Such resolutions, statements, verified certificates and opinion shall be deemed and taken as plenary authority to the said Trustee for its certification of such bonds under the foregoing provisions of this Article.

Except to retire or acquire liens, charges or indebtedness for which bonds so used shall have been reserved, as hereinbefore provided, bonds shall not be issued or certified under this Section in excess of an aggregate amount of $1,500,000 in any one calendar year; nor shall they be issued or certified on account of any railroad or property held or controlled by the Railway Company otherwise than by ownership, except in respect of additions to property embraced under one or more of the leases above specified in the granting clauses of this indenture, or under some extension, renewal or substitution of some such lease.

SEC. 4. The Railway Company from time to time, and at all times shall deliver to the Trustee as part of the mortgaged premises and as additional security for the bonds issued hereunder any and all stocks, bonds or other securities which it shall receive from any lessor of any leasehold estate mortgaged hereunder for or on account of any construction, acquisition or betterment connected with or attaching to such leasehold estate, so far as any such construction, acquisition or betterment shall be specified in any certificate hereunder or reimbursed to the Reading Company by the use of bonds secured hereby.

SEC. 5. In case any bond issued hereunder shall become mutilated or be destroyed, the Railway Company, in its discretion, may issue, and the Trustee, in its discretion, may certify and deliver a new bond of like tenor and date, bearing the same serial number, in exchange and substitution for, and upon cancellation of, the mutilated bond, or in lieu of, and substitution for, the bond so destroyed, upon receipt of satisfactory evidence

of the destruction of such coupon bond and its coupons, or of such registered bond, and upon receipt also of satisfactory indemnity.

SEC. 6. Nothing in this Article, or in any other Article of this indenture, expressed or implied, is intended, or shall be construed, to confer upon any person or corporation, other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy or claim upon, under or in respect of this indenture, or any covenant, condition or stipulation thereof; all its covenants, conditions and stipulations being intended to be, and being for the sole and exclusive benefit of the parties hereto, and of the holders of bonds hereby secured.

ARTICLE TWO.

THE RAILWAY COMPANY COVENANTS AS FOLLOWS:

SECTION 1. It will well, duly and punctually pay, or cause to be paid, to every holder of any bond issued and secured hereunder, the principal and interest accruing thereon, at the dates and place and in the manner mentioned in such bonds, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States, or any State or Municipality thereof, which the Railway Company may be required to pay or retain therefrom under or by reason of any present or future law.

SEC. 2. All lines of railway and property of every kind, and all interest therein, when and as hereafter acquired by the Railway Company as above provided in Article One, immediately upon, and subject to the terms and conditions of, such acquisition, and without any further conveyance or assignment, shall become, and be subject to the lien of this indenture as fully and as

completely as though now owned by the Railway Company, and expressly and specifically conveyed by, and embraced in, the granting clauses of this indenture; but at any and all times the Railway Company will execute and deliver any and all such further assurances or conveyances thereof as the Trustee may reasonably direct or require, for the purpose of expressly and specifically subjecting the same to the lien of this indenture.

SEC. 3. Whenever demanded by the Trustee, the Railway Company, so far as practicable, will grant, convey, confirm, assign, transfer and set over unto the Trustee all real and personal estate, corporate rights and franchises which, in any way or manner, it shall acquire as appurtenant to, or for use upon, any railroad or leasehold estate hereby mortgaged (including all railroads and leasehold estates which shall hereafter become subject to the lien of this mortgage); and it will also do, execute and deliver, acknowledge or cause to be done, executed, acknowledged and delivered all and every such further acts, deeds, conveyances and transfers, and assurances in the law, for the better assuring, conveying and confirming unto the Trustee all and singular the hereditaments and premises, estates and property hereby conveyed, or intended so to be, or which the Railway Company has herein covenanted and agreed hereafter to convey to the Trustee, as it shall reasonably require for the better accomplishing the provisions and purposes of this indenture, and for securing payment of the principal and interest of the bonds intended to be hereby secured.

SEC. 4. The Railway Company will, at an office or agency to be maintained by it in the City of Philadelphia, keep a sufficient register or registers of bonds issued hereunder, which registers at all reasonable times shall be open to the inspection of the Trustee; and, upon presentation for such purpose, it will, under such reasonable regulations as it may prescribe, register therein any bond issued under the provisions hereof.

As to all bonds so registered, the person in whose name the same shall be registered shall for all purposes of this indenture be deemed and regarded as the owner thereof, and thereafter payment of, or on account of, the principal and interest of such bond shall be made only to such registered holder or upon his order; but such registration may be changed as hereinafter provided. All such payments so made shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

Upon presentation of any bond which shall have been registered as aforesaid, with the order or assignment of the registered holder, the same shall be transferred upon such register to the assignee thereof named in such written order or assignment, and thereafter such transferee or transferees of such bond shall be held to be the owner or owners thereof, and from time to time such transfers may be made as so directed by the registered holder of any such bond for the time being.

SEC. 5. The Railway Company will not voluntarily create or suffer to be created any lien or charge prior to the lien of these presents, upon the mortgaged premises, or any part thereof, or upon the income thereof (except upon some leasehold hereinbefore granted and as provided in the lease thereof), though it reserves, and from time to time may exercise, the right to extend the time for the payment of any bonds secured by mortgage upon the property above described or on any part thereof, or in substitution for any such existing bonds to issue new bonds of lien prior to that of this indenture, but not for an aggregate principal sum, nor at a rate of interest, larger than that now charged on such property by such existing liens; and the principal and interest of all such new or extended bonds may be made expressly payable in gold coin of the United States of the present standard of weight and fineness; and within six months after the same shall accrue it will pay all lawful claims and demands of mechanics, laborers and

others, which, if unpaid, might by law, be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof, or the income thereof.

SEC. 6. The Railway Company from time to time will pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the lines of railroad, and the leasehold estates and other premises hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such properties; and also will maintain and preserve unimpaired all its rights under the leases above specifically granted hereunder except as the same may be modified, renewed or substituted as herein expressly permitted.

SEC. 7. The Railway Company will not issue, negotiate, sell or dispose of any bonds hereby secured, otherwise than in accordance with the provisions of this indenture; and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, it will well and truly apply, or cause to be applied, the same, or the proceeds thereof, to and for purposes herein prescribed, and to and for no other or different purpose.

ARTICLE THREE

SECTION 1. No claim for interest on any bond which in any way, on or after maturity, shall have been transferred or pledged, separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of, or from, this indenture, except after the prior full payment of the principal of all bonds issued hereunder, and of all interest obligations not so transferred or pledged.

SEC. 2. In case (1) default shall be made in the payment of any interest on any bond at any time issued under and secured by this indenture, and any such default shall continue for a period of six months; or in case (2) default shall be made in the due and punctual payment of the principal of any bonds secured hereby; or in case (3) default shall be made by the Railway Company in the payment of any tax, assessment or other governmental charge lawfully imposed or levied upon any part of the property and premises hereby mortgaged, or the income and profits thereof, and such default shall continue for a period of six months after written notice thereof from the Trustee or from holders of five per cent. in amount of the bonds hereby secured; or in case (4) the Railway Company shall make default in the due observance and performance of any other covenant or condition herein contained, and any such default shall continue for a period of six months after written notice thereof from the Trustee or from the holders of five per cent. in amount of the bonds hereby secured; then, and in each and every such case of default (provided, however, in respect of each of the three cases so indicated that such default shall have continued for six months as aforesaid), the Trustee personally, or by its agent or agents, attorney or attorneys, may enter into and upon all or any part of the railways, rolling stock, property and premises, lands, rights, interests and franchises hereby conveyed, or intended so to be, and each and every part thereof, and may exclude the Railway Company, its agents and servants, wholly therefrom, and having and holding the same may use, operate, manage and control said railways and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents and servants or attorneys, to the best advantage of the holders of the bonds hereby secured in accordance with law and with any statute relating to said railways and other premises or any part thereof, or to the

operation thereof; and, upon every such entry the Trustee, at the expense of the trust estate, from time to time, by purchase, repairs or construction, may maintain and restore, and insure or keep insured, the rolling stock, tools and machinery and other property, buildings, bridges and structures erected or provided for use in connection with said railways and other premises, and whereof it shall become possessed, as aforesaid, in the same manner and to the same extent as is usual with railway companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements and useful alterations, additions, betterments and improvements thereto and thereon, as well in respect of the rolling stock as in respect of the railways and appurtenances and other subject matters as to it may seem judicious; and it may collect and receive all tolls freights, incomes, rents, issues and profits of the same and every part thereof, and also the income from stocks and bonds pledged hereunder, and after deducting the expenses of operating said railways and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said premises and property, or any part thereof, including any interest paid on bonds prior in lien to those secured hereby, as well as just and reasonable compensation for its own services and for all agents, clerks, servants and other employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest remaining in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of four per cent. per annum;

such payments to be made ratably to the persons or parties entitled thereto without discrimination or preference;

In case the principal of the bonds hereby secured shall have become due by declaration or otherwise, first to the payment of the accrued interest (with interest thereon at the rate of six per cent. per annum) in the order of the maturity of the installments thereof, and next to the payment of the principal of all bonds hereby secured; in every instance such payments to be made ratably to the persons or parties entitled to such payment, without any discrimination or preference;

These provisions, however, are not intended in any wise to modify the provisions of Section 1 of this Article.

In case, and during such continuance, of any such default in either of the first three cases specified in this section, either with or without entry by the Trustee, and also in the fourth case, if the Trustee shall have entered or shall have elected to enter as aforesaid, the Trustee shall have, exercise and enjoy the right to vote on all shares of stock pledged or agreed to be pledged hereunder, and, for the benefit of the holders of bonds hereby secured, the right to receive and collect all interest moneys and dividends maturing or payable upon all pledged bonds and stocks, and to apply, as hereinbefore provided, the net moneys received, and as holder of such shares of stock and of such bonds pledged or agreed to be pledged in this indenture, to perform any and all acts, and to make or execute any and all requests, requisitions or other instruments. In the event that the Trustee shall have entered into possession of the mortgaged premises, it may, from time to time, in its discretion, turn over any part or all of the interest, moneys and dividends so collected by it to any Receiver then in possession of the mortgaged railways.

SEC. 3. In case default shall be made by the Railway Company in the payment of any interest on any bond hereby secured, and such default shall continue for a period of six months, then and in every case of such continuing default, upon the written request of the holders of a majority in amount of the bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Railway Company, shall declare the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary thereof in anywise notwithstanding. This provision is, however, subject to the condition that, if at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of six per cent. per annum on overdue installments of interest, shall either be paid by the Railway Company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by like written notice to the Railway Company and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other lawful reason, or shall have been determined adversely to the Trustee, then and in every such case the Railway Company shall be restored to its former position and rights hereunder in respect of the mortgaged premises and the shares of stock and bonds, and other property, herein pledged or agreed to be pledged; and,

upon the written request of the Railway Company, the Trustee shall do, make, execute, acknowledge and deliver such acts, deeds, instruments and assurances in the law as may be required to effectuate such purpose; but, nevertheless, all rights, remedies and power of the Trustee shall survive and continue as though no such proceedings had been taken.

SEC. 4. In case (1) default shall be made by the Railway Company in the payment of any interest on any bond secured by this indenture, and any such default shall continue for a period of six months; or in case (2) default shall be made by the Railway Company in the due and punctual payment of the principal of any bond secured hereby, or in case (3) default shall be made by the Railway Company in the payment of any tax, assessment or other governmental charge lawfully imposed or levied upon any part of the mortgaged property or premises or the income or profits thereof, and such default shall continue for a period of six months after written notice thereof from the Trustee or from the holders of five per cent. in amount of the bonds hereby secured, or in case (4) the Railway Company shall make default in the due observance and performance of any other covenant, or condition herein contained, and any such default shall continue for a period of six months after written notice thereof from the Trustee or from the holders of five per cent. in amount of the bonds hereby secured; then, and in each and every such case of default (provided, however, in respect of each of the three cases so indicated, that such default shall have continued for six months as aforesaid), the Trustee, with or without entry, personally or by attorney, in its discretion (*a*) may sell to the highest and best bidder, all and singular the mortgaged property and premises, bonds and stocks, rights, franchises and interests, lands and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one

lot and as an entirety, unless a sale in parcels shall be required under the provisions of Section 6 of this Article, in which case such sale may be made in parcels as in said Section provided, which sale or sales shall be made at public auction at such place in the City of Philadelphia, in the State of Pennsylvania, or at such other place, and at such time and upon such terms, as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or (*b*) immediately upon the expiration of the six months in the three cases so indicated, and immediately upon default in payment of principal, in the other case may proceed to protect and enforce the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and to enforce any of its rights or duties hereunder.

Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any such continuing default, it shall be the duty of the Trustee upon being indemnified as hereinafter provided to take all needful steps for the protection and enforcement of its rights and the rights of the bondholders secured hereby, and to exercise the powers of entry and sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee being advised by counsel learned in the law shall deem most expedient in the interest of the holders of the bonds hereby secured.

SEC. 5. Anything in this indenture contained to the contrary notwithstanding, the holders of seventy-five per cent. in amount of the bonds hereby secured and then outstanding in case of

any subsisting default, from time to time, shall have the right to direct and control the method and place of conducting any and all proceedings for any sale of the premises hereby conveyed and pledged, or agreed or intended so to be, or for the foreclosure of this indenture, or for the appointment of a Receiver, or of any other proceedings hereunder.

SEC. 6. In the event of any sale, whether made under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the property hereby mortgaged and pledged shall be sold in one parcel and as an entirety, including all the rights, title, estates, lands, railroads, equipment, franchises, leases, leasehold interests, contracts, and other real and personal property of every name and nature, unless the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the Trustee to cause said premises to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request or petition, or unless such sale as an entirety is impracticable by reason of some statute or other cause; and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be.

SEC. 7. Notice of any such sale pursuant to any provision of this indenture, shall state the time and place, when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive weeks next prior to such sale in a newspaper published in New York, N. Y.; a newspaper published in Philadelphia, Pennsylvania, and a newspaper published in Reading, Pennsylvania.

SEC. 8. Upon the completion of any sale or sales under

this indenture, the Trustee shall make, execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, of conveyance of the property and franchises sold. And the Trustee and its successors are hereby appointed the true and lawful attorney or attorneys, irrevocable, of the Railway Company, in its name and stead to make all necessary deeds and conveyances of property, and for that purpose it and they may execute all necessary acts of assignment and transfer, and may substitute one or more persons with like power, the Railway Company hereby ratifying and confirming all that its said attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Railway Company of, in and to the premises sold, and shall be a perpetual bar, both at law and in equity, against the Railway Company, its successors and assigns, and against any and all persons claiming or to claim the premises sold, or any part or parcel thereof, by, from, through or under the Railway Company, its successors and assigns, or any of them.

The personal property and chattels conveyed, or intended to be conveyed by or pursuant to this indenture, shall be real estate for all the purposes of this indenture, and shall be held and taken to be fixtures and appurtenances of the said railroads and part thereof, and are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

SEC. 9. The Trustee, from time to time may adjourn any sale to be made by it under the provisions of this indenture, by announcement at the time and place appointed for such sale, or

for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

SEC. 10. The receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers of the property sold as aforesaid, for the purchase money, and no such purchaser or purchasers, or his, their or its representatives, vendees, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SEC. 11. In case of any such sale, whether under the power of sale hereby granted, or pursuant to judicial proceedings, and whether for default in payment of interest only, or because of the breach of some other covenant or condition of this indenture, the whole of the principal sum of the bonds hereby secured, if not previously declared due, shall at once become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

SEC. 12. The proceeds or avails of any such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, and the purchase money paid thereon, together with any sums which may be held by the Trustee under any of the provisions of this indenture, at the time of, or after such sale, as part of the trust estate or the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the

Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made and incurred by the Trustee in managing and maintaining the property hereby conveyed or so intended to be, and of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens to which such sales shall have been made subject.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of six per cent. per annum on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and accrued and unpaid interest, subject, however, to the provisions of Section 1 of this Article.

Third. To the payment of the surplus, if any, to the Railway Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

SEC. 13. The Railway Company covenants that in case (1) default shall be made in the payment of any interest on any bonds at any time outstanding and secured by this indenture, or in case (2) default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether at the maturity of said bonds or by declaration as authorized by this indenture, or by a sale of the mortgaged premises as hereinbefore provided, then, upon demand of the Trustee, the Railway Company will pay to the Trustee the whole amount of the interest or of the interest and principal due and payable on all the bonds hereby secured then out-

standing, with interest at the rate of six per cent. per annum upon the over-due principal and installments of interest; and in case the Railway Company shall fail to pay the same, forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before, or after, or during the pendency of, any procedings for the enforcement of the lien of this indenture upon the mortgaged and pledged premises, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien thereof; and in case of a sale of the mortgaged premises and of the application of the proceeds of sale to the payment of the mortgaged debt, the Trustee, in its own name and as Trustee of an express trust, shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the mortgage debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee and no levy of any execution upon any such judgment upon property subject to the lien of this indenture, or upon any other property, shall in any manner, or to any extent, affect the lien of the Trustee upon the mortgaged premises or any part thereof, or any rights, powers or remedies of the Trustee hereunder, or any rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies shall continue unimpaired as before.

All moneys collected by the Trustee under this Section shall be distributed and paid over by it to the persons registered as holders of the registered bonds at the time of payment, and the persons presenting the coupon bonds and

coupons for such payment, without any preference or priority of any kind, and ratably according to the amounts which shall have become due upon such bonds and coupons respectively.

SEC. 14. The Railway Company will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force in any locality where the mortgaged premises or pledged property, or any part of either, may or shall be situate, nor will it claim, take or insist on, any benefit or advantage from any law now or hereafter in force, providing for the valuation, or appraisement, of the mortgaged premises, or pledged property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute to redeem the property so sold, or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

SEC. 15. Upon filing a bill in equity, or upon commencement of any other judicial proceedings to enforce any right of the Trustee or of the bondholders under this indenture, the Trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein and hereby conferred upon, and provided to be exercised by, the Trustee upon the occurrence and continuance of default as hereinbefore provided; and, in any case of any default entitling it to enter as provided in Section 2 of Article Four hereof, as matter of right, the Trustee shall be entitled to the appointment of a Receiver of the premises hereby mortgaged, and of the earnings, income, revenue, rents, issues or profits thereof,

with such powers as the Court making such appointment shall confer; but notwithstanding the appointment of any Receiver, the Trustee shall be entitled, as pledgee, to continue to retain possession and control of the stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

SEC. 16. The Railway Company at any time hereafter before full payment of the bonds secured hereby, and whenever it shall deem expedient for the better security of such bonds, although there be then no default entitling the Trustee to enter into possession, may, with the consent of the Trustee, surrender and deliver to the Trustee full possession of the whole or any part of the property, premises and interests hereby conveyed, or intended so to be, for any period fixed or indefinite. Upon such surrender and delivery to the Trustee, with its consent, the Trustee shall enter into and upon the premises so surrendered and delivered, and shall take and receive possession thereof for such period, fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises, or of any part thereof, the Trustee, from the time of its entry, shall work, maintain, use, manage, control and employ the same in accordance with the provisions of this Indenture, and shall receive and apply the income and revenues thereof as provided in Section 2 of this Article. Upon application of the Trustee, and with consent of the Railway Company if there be then no subsisting default hereunder, and without such consent if there shall then be a subsisting default entitling the Trustee to enter as provided in Section 2 of Article Four hereof, a Receiver may be appointed to take possession of, and to operate, maintain and manage the whole or any part of said property wheresoever the same may be situated, with all the rights, powers and duties

by this section conferred upon the Trustee, and the Railway Company shall transfer and deliver to such Receiver all such property in his possession wheresoever the same may be situated; provided, however, that, notwithstanding the appointment of any such Receiver, the Trustee, as pledgee, shall be entitled to retain possession and control of the stocks, bonds, cash and other property pledged with Trustee hereunder.

SEC. 17. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture or for the execution of any trust thereof, or for the appointment of a Receiver, or for any other remedy hereunder, unless such holder shall previously have given to the Trustee written notice of such default and of the continuance thereof, as hereinbefore provided, nor unless, also, the holders of twenty-five per cent. in amount of the bonds hereby secured and then outstanding shall have made written request of the Trustee, and shall have afforded to it reasonable opportunity either itself to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, nor unless, also, they shall have offered to the Trustee adequate security and indemnity against the cost, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action, or cause of action, for foreclosure or for the appointment of a Receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner

herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

SEC. 18. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee or to the holders of bonds hereby secured is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SEC. 19. In case of any sale hereunder, any and all purchasers in making settlement or payment, shall be entitled to turn in any bonds hereby secured, estimating the value of such bonds for that purpose at the sum payable for the principal and interest thereof out of the net proceeds of such sale to the holder or holders of such bonds as his or their ratable share of such net proceeds, after allowing for the proportion of the total payment required to be made in cash for the cost and expenses of the sale or otherwise; and if such share of net proceeds shall be less than the amount then due upon such bonds, such purchaser or purchasers may make such settlement by receipting on the bonds the amount to be credited thereupon; and at any such sale any bondholder may bid for and purchase such property, and, upon compliance with the terms of sale, may hold, retain, and dispose of, such property without further accountability therefor.

SEC. 20. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power arising from any default continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein.

ARTICLE FOUR.

Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor, and may be signed and executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, if made in the following manner:

The fact and date of the execution by any person of any such request, or other instrument, or writing, may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in Pennsylvania or New York, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution.

The amount of bonds transferable by delivery, held by any person executing any such request or other instrument as the holder of bonds, and the amounts and issue numbers of the bonds held by such person, and the date of his holding the same may be proved by a certificate executed by any trust company, bank, bankers or other depositary (wherever situated), whose certificate shall be deemed by the Trustee to be satisfactory, showing that such person had on deposit with such depositary the bonds described in such certificate at the date therein mentioned. The ownership of registered bonds shall be proved by the registers of such bonds as may be hereafter provided.

Such proof shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument.

ARTICLE FIVE.

SECTION 1. Upon the written request of the Railway Company, approved by resolution of its Board of Directors or Executive Committee, from time to time while the Railway Company is in possession of the mortgaged premises, but subject to the conditions and limitations in this Section prescribed, and not otherwise, the Trustee shall release from the lien and operation of this indenture any part of the mortgaged premises; *provided*, that no part of the lines of track or of the roadway shall be released unless the Railway Company shall have ceased to use the same as part of its lines of railroad, and no part of such railway shall be so abandoned or released if thereby the continuity of the lines of railway of the Railway Company shall be broken; and *provided, further*, that no part of the mortgaged premises appurtenant or incidental to the maintenance or operation of any part of the lines of railway subject to the lien of this indenture shall be released hereunder, unless at the time of such release the same shall no longer be requisite for any purpose for which it shall have been acquired or used, or shall no longer be necessary or expedient to be retained in connection with such lines of railway; and also *provided, further*, that such power of release shall be exercised only in case the premises released shall no longer be required in the operation of the railways or in the business of the Railway Company.

No such release shall be made unless the Railway Company shall have sold, or shall have contracted to exchange for other property, or to sell, the property so to be released; and, unless some other disposition thereof be required by some prior mortgage, the proceeds of any and all such sales, and all moneys received as compensation for any property subject to this indenture taken by exercise of the power of eminent domain, shall be set apart and applied, with the approval of the Trustee, to the purchase of other property, real or personal,

which shall be conveyed in trust by the Railway Company to the Trustee, subject to all the trusts hereby declared, or in betterments of or improvements upon any part of the mortgaged premises. Any new property acquired by the Railway Company to take the place of any property released hereunder, *ipso facto*, shall become and be subject to the lien of this indenture, as fully as if specifically mortgaged hereby, but, if requested by the Trustee, the Railway Company will convey the same to the Trustee by appropriate deeds upon the trusts and for the purposes of this indenture.

The Railway Company, from time to time, while in possession of the mortgaged premises shall also have full power, in its discretion, to dispose of any portion of the machinery, equipments and implements, at any time held or acquired for the use of any lines of railway which may have become unfit for such use, replacing the same by new machinery, equipment or implements, which shall become subject to the operation of this indenture.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this Article of this indenture be required to see to the application of the purchase money.

In case the mortgaged premises shall be in the possession of a Receiver lawfully appointed, the powers in and by this Section conferred upon the Railway Company may be exercised by such Receiver with the approval of the Trustee; and if the Trustee shall be in possession of the mortgaged premises under any provision of this indenture, then all the powers by this Section conferred upon the Railway Company may be exercised by the Trustee in its discretion.

A certificate signed by (1) the president or a vice-president and (2) the chief engineer of the Railway Company may be received by the Trustee as conclusive evidence of any of the facts mentioned in this Section and shall be full warrant to the Trustee for its action on the faith thereof; but the Trustee,

in its discretion, may require such further and additional evidence as to it may seem reasonable.

SEC. 2. In case at any time it shall become necessary, or in the judgment of the Trustee shall be for the interest of the bondholders hereby secured, or for the benefit of the mortgaged property, that the Railway Company shall make changes or alterations in or substitutions of any leases, trackage rights or contracts by which the Railway Company shall have secured access to any point or points, the Railway Company, with the written consent of the Trustee, may make any such changes, alterations or substitutions, and may make or cause to be made, executed and delivered, all such instruments in writing as may be proper and necessary to carry out and perfect any and all changes, alterations or substitutions authorized in this section.

At the same time provision shall be made by instruments in writing satisfactory to the Trustee so that such modified, altered or substituted leases, contracts or trackage rights forthwith shall become bound by and be subject to the terms of this indenture in the same manner as the prior leases, contracts and trackage rights.

ARTICLE SIX.

SEC. 1. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; or for anything whatever, in connection with this trust, except wilful misconduct or gross negligence. The Trustee shall not be personally liable for any debts contracted by it or for damages to persons or property carried or injured, or for salaries or non-fulfillment of contracts, during any period wherein the Trustee shall manage the trust prop-

erty or premises upon entry or voluntary surrender as aforesaid. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trust hereby created, which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder unless notified in writing of such default by the holders of at least five per cent. of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested in writing to take action in respect thereof by the holders of not less than twenty-five per cent. of the bonds hereby secured then outstanding, and tendered reasonable indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but neither any such notice or request, nor this provision therefor, shall affect any discretion herein given to the Trustee to determine whether or not it shall take action in respect of such default, or to take action without such request. The Trustee shall not be responsible for the recording of this indenture or for the filing of the same as a chattel mortgage.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created.

SEC. 2. The Trustee, or any Trustee hereafter appointed may resign, and be discharged of the trusts created by this indenture by giving notice thereof to the Railway Company and to the bondholders, by publication, at least twice a week, for four successive weeks, in one newspaper at that time published in New York, N. Y.; one newspaper published in Philadelphia, Penn., and one newspaper published in Reading, Penn., and by due execution of the conveyance herein required.

The Trustee may be removed at any time by an instrument

in writing under the hands of three-quarters in amount of the holders of the bonds secured hereby and then outstanding.

SEC. 3. In case at any time the said Trustee, or any trustee hereafter appointed, shall resign or be removed or otherwise become incapable of acting, a successor, or successors, may be appointed by the holders of a majority in amount of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized; provided, nevertheless, and it is hereby agreed and declared that, in case at any time there shall be a vacancy in the office of trustee hereunder, the Railway Company, by an instrument executed by order of its board of directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders or as hereinafter authorized. The Railway Company shall thereupon publish notice of such appointment once a week for six successive weeks in a newspaper published in New York, N. Y.: a newspaper published in Philadelphia, Penn., and a newspaper published in Reading, Penn.; and any new trustee so appointed by the Railway Company shall immediately, and without further act, be superseded by a trustee appointed in the manner above provided by the bondholders prior to the expiration of ninety days after such publication of notice. In case no such appointment shall be made by the bondholders prior to the expiration of such ninety days, a new trustee, to supersede the trustee appointed by the Railway Company, may nevertheless, be appointed by any judge of the United States Circuit Court for the Third Circuit or by any court of competent jurisdiction in the premises upon the application of one-quarter in amount of the bondholders. Every such trustee appointed in place of Central Trust Company of New York, or its successor in the trust, shall always be a trust company in good standing, doing business in the City of New York, and having a capital and surplus aggregating at least $2,000,000, if there be

such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any new trustee appointed hereunder shall execute, acknowledge and deliver to the trustee last in office, and also to the Railway Company, an instrument accepting such appointment hereunder, and thereupon such new trustee shall become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the trust hereunder with like effect as if originally named as trustee herein without any further act, deed or conveyance; but the trustee ceasing to act shall, nevertheless, on the written request of the new trustee, execute, and deliver an instrument transferring to such new trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the trustee so resigning or removed, and shall duly assign, transfer and deliver any stocks, bonds or other property and moneys held by such trustee to the new trustee so appointed in its or his place.

Should any deed, conveyance or instrument in writing from the Railway Company be required by any new trustee, for more fully and certainly vesting in and confirming to such new trustee such estate, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, be made, executed, acknowledged and delivered by the Railway Company.

Article Seven.

No recourse under any obligation, covenant or agreement of this indenture, or of any bond or coupon hereby secured, shall be had against any incorporator, stockholder, officer or director of the Railway Company, or of any successor corporation, either directly or through the Railway Company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this mortgage and the obligations hereby secured are solely corporate obligations, and

that no personal liability whatever shall attach to, or be incurred, by the incorporators, stockholders, officers or directors of the Railway Company, or of any successor corporation or any or either of them, under or by reason of any or either of the obligations, covenants or agreements in this indenture, or in any of the bonds or coupons hereby secured, expressed and contained or implied therefrom, and that any and all personal liability of every name and nature, either at common law or in equity, or by statute, of every such incorporator, stockholder, officer or director, is hereby expressly waived as a condition of, and consideration for, the execution and issue of this mortgage and such bonds and coupons.

Article Eight.

Section 1. Until some default shall have been made in the due and punctual payment of the interest, or of the principal, of the bonds hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railway Company, and, until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, or until the Railway Company voluntarily shall have surrendered possession to the Trustee as herein permitted, the Railway Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the premises hereby mortgaged (other than bonds, certificates of stock, cash and other property pledged or to be pledged hereunder with the Trustee) and the same and every part thereof, with the rights and franchises appertaining thereto, and the tolls, income, rents, issues and profits thereof to manage, operate, collect, receive, use and enjoy in any manner not inconsistent with the provisions hereof.

Sec. 2. If, when the bonds hereby secured shall have become due and payable, the Railway Company shall well and

truly pay, or cause to be paid, the whole amount of the principal moneys and interest due upon all of the bonds and coupons for interest thereon hereby secured, then outstanding, or shall provide for such payment by depositing with the Trustee hereunder for the payment of such bonds and coupons the entire amount due thereon for principal and interest, and shall also pay, or cause to be paid, all other sums payable hereunder by the Railway Company, and shall well and truly perform all the things herein required to be performed by it, according to the true intent and meaning of this indenture, then and in that case all property, rights and interest hereby conveyed or pledged shall revert to the Railway Company, and the estate, right, title and interest of the Trustee shall thereupon cease, determine and become void, and in such case, the Trustee on demand of the Railway Company, and at its cost and expense, shall enter satisfaction of this indenture upon the records; but otherwise, the same shall be, continue and remain in full force and virtue.

ARTICLE NINE.

SEC. 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Railway Company, shall bind its successors and assigns, whether so expressed or not.

SEC. 2. Nothing contained in this indenture, or in any bond hereby secured, shall prevent any lawful consolidation or merger of the Railway Company with any other corporation, or any conveyance or transfer, subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged and pledged premises as an entirety to a railroad corporation at that time existing under and by virtue of the laws of the United States or of any State thereof, and lawfully entitled to acquire the same; provided, however, that such consolidation, merger or sale shall not impair the lien and

security of this indenture, or any of the rights or powers of the Trustee, or of the bondholders hereunder, and that, upon any such consolidation, merger or sale, the due and punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by the corporation formed by such consolidation or merger or purchasing as aforesaid.

SEC. 3. In case the Railway Company, pursuant to Section 2 of this Article, shall be consolidated or merged with any other corporation, or shall sell, convey and transfer, subject to this indenture, all the mortgaged and pledged premises as an entirety as aforesaid, the successor corporation formed by such consolidation or into which the Railway Company shall have been merged, or which shall have purchased and received a conveyance and transfer as aforesaid, upon executing and causing to be recorded an indenture with the Trustee, satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of said bonds and the performance of all the covenants and conditions of this indenture, shall succeed to, and be substituted for, the Railway Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part, and such successor corporation thereupon may cause to be signed and may issue, either in its own name or in the name of the Philadelphia and Reading Railway Company, any or all of such bonds which shall not theretofore have been signed by the Philadelphia and Reading Railway Company and delivered to the Trustee, and, upon the order of said successor corporation and subject to all the terms, conditions and restrictions herein prescribed, the Trustee shall certify and deliver any of such bond which shall have been previously signed and delivered by the officers of the Railway Company to the Trustee for certification, and any of such bonds which such successor cor-

poration shall thereafter cause to be signed and delivered to the Trustee for that purpose. All the bonds so issued shall in all respects have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture, as though all of said bonds had been issued at the date of the execution hereof.

SEC. 4. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the terms "Railway Company" and "Philadelphia and Reading Railway Company" include and mean not only the party of the first part hereto, but also any such successor corporation, formed under the laws of the United States or of any State or States. Every such successor railroad corporation shall possess and from time to time may exercise each and every right and power hereunder of the Philadelphia and Reading Railway Company, in its name or otherwise.

SEC. 5. Any act or proceeding by any term of this indenture or of any bond or resolution herein recited, required or provided to be done or performed by any board or officer of the Railway Company, shall and may, in event of any change in its existence, be done and permitted with like force and effect by the like board or officer of any railroad corporation that shall at the time be lawful sole successor of the Railway Company.

SEC. 6. Nevertheless, before the exercise of the powers conferred by this article, the Railway Company, by instrument in writing executed by authority of two-thirds of its board of directors and delivered to the Trustee may surrender any of the powers reserved to the Railway Company or to such successor corporation under this Article and thereupon such power so surrendered shall terminate.

SEC. 7. For every purpose of this indenture, and for all rights thereunder, including the issue, delivery and reception of bonds hereunder, the term Reading Company shall be taken

to mean either the Pennsylvania corporation heretofore existing under the name of the National Company, or any successor or consolidated or other corporation which, with the approval of the Trustee and the Railway Company, shall be designated in lieu of such existing company.

ARTICLE TEN.

The Railway Company may deem and treat the bearer of any bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether or not such bond shall be registered, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and the Railway Company shall not be affected by any notice to the contrary.

ARTICLE ELEVEN.

Central Trust Company of New York, Trustee party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

The words "the Trustee," or "said Trustee" or any other equivalent term, as used in this indenture (except when otherwise clearly indicated), shall be held and construed to mean the Trustee, or Trustees, for the time being, whether original or successor, and the words "Trustee," "bond," "bondholder" and "holder" shall include the plural as well as the singular number, and the term "majority" shall signify "majority in amount," whether or not so expressed.

In order to facilitate the record of this indenture, the same may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

In witness whereof, the Philadelphia and Reading Railway Company, the party hereto of the first part, has caused this indenture to be signed and acknowledged or proved by its President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary; and Central Trust Company of New York, the party of the second part, has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary, and these presents to be signed and acknowledged or proved by its 2d Vice-President the day and year first above written.

PHILADELPHIA AND READING RAILWAY COMPANY,

By

[SEAL.] J. S. HARRIS,
President.

Attest:
W. R. TAYLOR,
Secretary.

CENTRAL TRUST COMPANY OF NEW YORK,

By

[SEAL.] E. FRANCIS HYDE,
Second Vice-President.

Attest:
B. G. MITCHELL,
Asst. Secretary.

Signed, sealed and delivered on behalf of the Railway Company in the presence of

W. R. TAYLOR.
W. G. BROWN.

Signed, sealed and delivered on behalf of the Trust Company in the presence of

M. FERGUSON.
WM. H. BRUDER.

COMMONWEALTH OF PENNSYLVANIA, }
City of Philadelphia, } ss.:

On the seventh day of December, 1896, before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared William R. Taylor, Secretary of the above-named Philadelphia and Reading Railway Company (he being one of the subscribing witnesses to the sealing and delivery of the above indenture), who, being by me duly sworn according to law, did depose and say: That he was present at the execution of the said indenture, and did see Joseph S. Harris, the President of said corporation, affix the common or corporate seal of the said Philadelphia and Reading Railway Company thereto, and subscribe his name as President in attestation thereof; that the seal so affixed is the common or corporate seal of the said corporation, and that the said seal was so affixed, and the said indenture was duly sealed and delivered by the said President, as the act and deed of the said corporation, for the uses and purposes therein mentioned, in pursuance of a resolution of the Board of Directors duly passed at a meeting thereof, held the 18th day of November, A. D. 1896; that he saw W. G. Brown, the said subscribing witness, sign his name to the said indenture; and that the name of this deponent, subscribed to said indenture as Secretary of the said Company, in attestation of the due execution and delivery of the said indenture, and also subscribed as a witness to the sealing and delivery thereof, are of his (this deponent's) own handwriting.

W. R. TAYLOR.

Sworn and subscribed before me.
Witness my hand and notarial
seal the day and year aforesaid.

C. K. KLINK,
Notary Public. [SEAL.]

STATE OF NEW YORK,
City and County of New York, } ss.:

On the ninth day of December, in the year 1896, before me personally came E. Francis Hyde, to me known, and who, being by me duly sworn, did depose and say that he resided in the City of New York; that he was the 2d Vice-President of Central Trust Company of New York, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to such instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like authority.

WM. H. BRUDER,
Notary Public (201),
New York County.

[SEAL]

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:

I, HENRY D. PURROY, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, Do Hereby Certify That Wm. H. Bruder, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument and thereon written was, at the time of taking such proof or acknowledgment, a Notary Public in and for the City and County of New York, dwelling in the said City, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 9th day of December, 1896.

HENRY D. PURROY,
Clerk.

[SEAL.]

Government's counsel offer in evidence, from **pamphlet containing the proceedings on foreclosure of the Philadelphia and Reading Railroad Company** *et al.*, in 1895, pages 204-216 inclusive, being the residue of the same document introduced in evidence by the defendants, beginning at page 1938 of the stenographic minutes of the defendants' evidence (printed page 1095), as follows:—

"AGREEMENT

READING COMPANY

with

CHARLES H. COSTER AND FRANCIS LYNDE STETSON, PURCHASERS, AND J. P. MORGAN & CO., MANAGERS.

THIS AGREEMENT, Made this twenty-third day of December, 1896, by and between Reading Company, a corporation organized and existing under the laws of the State of Pennsylvania (hereinafter called the Company), party of the first part, and Charles H. Coster and Francis Lynde Stetson (hereinafter called the Purchasers), parties of the second part, and J. P. Morgan & Co., a copartnership, of the city of New York (hereinafter called the Managers), parties of the third part, Witnesseth as follows:—

WHEREAS, The parties of the second part were the purchasers of the property of the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company, at the foreclosure sale thereof on the twenty-third day of September, 1896, under and in pursuance of a judgment and decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, and under certain deeds of conveyance thereof made, executed and delivered October 23d, 1896, one by The Pennsylvania Company for Insurances on Lives and Granting Annuities, as trustee under a certain mortgage or deed of trust of the Philadelphia and Reading Railroad Company and the Philadelphia and Reading

Coal and Iron Company, called the General Mortgage, bearing date the third day of January, 1888, and the other by said the Philadelphia and Reading Coal and Iron Company;

And Whereas, The parties of the second part in association with J. P. Morgan & Co. have this day tendered and delivered to the Company, the party of the first part, several certain deeds of conveyance of property formerly of the Philadelphia and Reading Railroad Company, and also transfers of divers other assets, stocks and bonds, which deeds and transfers were delivered to and accepted by the party of the first part upon the express condition and agreement that it would make and perform the covenants and conditions of this agreement;

And Whereas, Such purchases and such conveyances were made under and in pursuance of the request of the parties of the second part, hereto as Managers under a certain plan and agreement for the reorganization of the Philadelphia and Reading Railroad Company and the Philadelphia and Reading Coal and Iron Company, dated December 14th, 1895, and in intended compliance with and promotion of the provisions of said plan and agreement;

Now, Therefore, in consideration of the premises and of the mutual promises and agreements hereinafter contained, the parties hereto mutually do hereby promise and agree as follows, to wit:—

First.—When and as requested by the Purchasers or by the Managers, or by their assigns, either individual or corporate, by them from time to time designated:—

1. The Company will issue and deliver to them, or upon their orders, certificates for 2,799,000 shares of its fully paid and non-assessable stock of the character described in the said plan of reorganization, as follows, viz:—

(*a*) 560,000 shares of its first preferred stock;
(*b*) 840,000 shares of its second preferred stock;
(*c*) 1,399,000 shares of its common stock.

2. The Company, either alone or jointly with The Philadelphia and Reading Coal and Iron Company as co-obligor, will make, execute and deliver bonds for the aggregate principal sum of one hundred and thirty-five million dollars, bearing interest at the rate of four per cent. per annum, payable semi-annually, both principal and interest being payable in gold coin of the United States of the present standard of weight and fineness, and the principal payable on the first day of January, 1997; and the Company will make, execute and deliver a mortgage or deed of trust, granting, conveying and pledging, as security for the payment of all such bonds, all its assets of every name or nature, now owned or hereafter acquired, and all its franchises, it being intended to include under such mortgage (either directly or by collateral trust), substantially all the property formerly of The Philadelphia and Reading Railroad Company (subject to such deductions therefrom or changes therein as the Purchasers or their assigns, for business reasons, may decide not to include under such mortgage), and also the capital stock of the Philadelphia and Reading Railway Company and of the said The Philadelphia and Reading Coal and Iron Company;

Provided, That (1) not more than fifty million four hundred thousand dollars of such bonds shall be presently issued for the general purposes of the Purchasers or of their assigns; that (2) of the remainder of such authorized issue about sixty-four million six hundred and twenty-nine thousand dollars shall be used to acquire various outstanding bonds of The Philadelphia and Reading Railroad Company (including the collateral sinking-fund loan of the said railroad company of 1892, under which the principal sum of one million seven hundred and seventy-four thousand dollars is now outstanding and unpaid, which loan The Philadelphia and Reading Coal

and Iron Company has assumed and agreed to pay), and the outstanding bonds of The Philadelphia and Reading Coal and Iron Company, approximately amounting to the principal sum of twelve million five hundred thousand dollars; that (3) of the remainder of said authorized issue, twenty million dollars shall be reserved and used for the acquisition of property ultimately to be devoted to the security of such bonds.

Second.—In case the property or assets of the Company shall be used or taken for the payment or discharge of any obligation of any kind under the said bonds or mortgages, the Company, to the extent of such payment or appropriation of its property in excess of one-half of the aggregate sum payable under such bonds, shall have a claim for the amount of such excess against the party joining with it in the execution of said bonds and the mortgage securing the same.

Third.—In every way and at all times the Company, at its own expense and risk, will indemnify and hold harmless the said Coster and Stetson, their heirs, executors and administrators, against and from every claim, costs and charges of every name or nature arising out of or connected with their acquisition, tenure or transfer of any of the property by them transferred to the Philadelphia and Reading Railway Company, The Philadelphia and Reading Coal and Iron Company or the Reading Company.

Fourth.—The Company from time to time hereafter will make and perform any agreements which the Managers may require, and will adopt and will perform any and all agreements which may have been made or which may be made by the Managers with respect to the issue of the securities of the Company, as provided in said plan and agreement of December 14th, 1895, above mentioned. The Company, upon demand of the Managers, will assume and satisfy all obligations and liabilities of the Managers in connection with such sales and pur-

chases of property, or with the reorganization under said plan and agreement, or any modification thereof, or with the acquisition of stocks or bonds necessary or desirable to acquire in connection with, or as a part of, such reorganization.

Fifth.—The Company, upon request of the Managers, will at all times and in all ways do and perform any and all acts, and execute and deliver any and all writings, suitable to carry fully into effect the said plan and agreement according to the terms and intention thereof, subject to all such modifications as from time to time may be made in pursuance of the terms thereof.

Sixth.—The Company from time to time, on demand of the Managers, will pay to the order of the Managers all such sums as they or any of them shall have incurred, or may hereafter incur, for expenses in and about the performance of such agreement and plan of reorganization, and will indemnify and hold harmless the Managers, and each of them, from and against all costs, expenses, liabilities and charges whatsoever incurred, or which may be incurred, by the Managers, or the members or any of them, in carrying out such plan and agreement or reorganization, or by reason of any acts done or suffered to be done thereunder.

Seventh.—The Managers from time to time, so far as lawful, will vest or cause to be vested in the Company the ownership of the stocks, bonds or other property representing the system formerly of The Philadelphia and Reading Railroad Company so far as the same shall have been acquired by the Managers in the performance of said plan and agreement of reorganization, and also any balance of cash received by the Managers for the purpose of carrying out such plan and agreement, except so far as such stocks, bonds and other property may be converted or otherwise dealt with, and said cash to be expended, by the Managers in effecting any of the purposes of said plan and agreement; it being the intention of this agreement and of the parties hereto that

the Company, so far as lawful, shall become and be the suitable agency contemplated in the said plan and agreement for the ownership or control of the properties acquired and to be acquired pursuant to said plan and agreement.

Eighth.—From time to time the Company, the Purchasers and the Managers will, in all particulars, cooperate with each other, and will assist each other in carrying this agreement into effect, and in accomplishing the purposes of the said plan and agreement of reorganization as now existing, or as from time to time modified, in pursuance of the provisions thereof; and if for any reason it shall, at any time, become impracticable for the Company to execute or to perform any part or provision of such plan or agreement of reorganization, then and in that case the Managers may select any other suitable agency or method for such performance, and upon the happening of any such contingency, the securities or property received or created by the Managers under such modification shall be accepted by the Company, in lieu and in substitution of any existing securities or property embraced within the purview of this agreement, at the value of the property represented by such new securities.

Ninth.—This agreement is made upon the condition that the Managers reserve unimpaired all rights and powers under said plan and agreement; that the Managers may construe said plan, and that their construction thereof shall be conclusive, and that they may supply any defect or omission. It is further agreed that the Managers, from time to time, in their discretion, may alter or modify said plan or agreement within the limits therein authorized, and that in case of any such alteration or modification this agreement shall apply to the altered or modified plan and agreement in all respects as though the same were in force at the present time.

Tenth.—This agreement, and each and every provision thereof, may at any and all times be modified, extended or enlarged by the agreement of the Managers,

on the one side, and the president or first vice-president of the Company on the other.

In Witness Whereof, The Company, by the authority of its board of directors, each and every of its stockholders consenting thereto, has caused these presents to be executed and delivered by its president, under its corporate seal, attested by its secretary, and the Purchasers and the Managers respectively have hereunto set their hands and seals the day and year first above mentioned.

READING COMPANY,
By
J. S. HARRIS,
President.

[L. S.]

Attest:—
W. R. TAYLOR,
Secretary.

C. H. COSTER, [L. S.]
FRANCIS LYNDE STETSON. [L. S.]
Purchasers.

J. P. MORGAN & CO., [L. S.]
Managers.

In presence of:

The undersigned, being all of the stockholders of the Reading Company, hereby assent to and approve of the foregoing agreement.

C. H. COSTER,
FRANCIS LYNDE STETSON.

C. H. COSTER,
FRANCIS LYNDE STETSON.

J. S. HARRIS,
GEO. F. BAER,
JNO. LOWBER WELSH,
THOMAS McKEAN,
GEO. C. THOMAS,
A. J. ANTELO,
A. FOSTER.

PETITION OF RECEIVERS TO PUBLISH NOTICE REQUIRING HOLDERS OF ANY CLAIMS AGAINST THE COMPANIES OR THE RECEIVERS TO PRESENT OR FILE THE SAME WITHIN SIX MONTHS. ORDER OF COURT GRANTING THE SAME.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The Pennsylvania Company for Insurances on Lives and Granting Annuities,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, Receivers.

APRIL SESSIONS, 1895.

NO. 9.

IN EQUITY.

TO THE HONORABLE THE JUDGES OF THE SAID COURT:

The petition of Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers, respectfully represents:—

That in any by the final decree of May 1st, 1896, in the above-entitled cause, providing for a sale of the properties, premises and franchises of the corporations defendant, your petitioners were directed to file, within two weeks prior to the time of sale, with the clerk of the Court:—

1. "A statement showing as definitely as practicable all indebtedness, obligations and liabilities contracted or incurred by them then remaining unpaid."

2. "A statement showing, as definitely as practicable all indebtedness or liabilities contracted or incurred by

said defendants, The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company, or either of them, in the operation of the mortgaged property prior to the appointment of the Receivers, and which, so far as they are informed, are claimed to be prior in lien or superior in equity to said General Mortgage."

By the terms of the said decree it was further provided that "Any such claims for indebtedness or liabilities which shall not have been included in such statement of the Receivers, or which shall not have been presented in writing to the Receivers, or filed with the clerk of this Court prior to the time of delivery of possession of such property, shall be presented for allowance and filed within six months after the first publication by the Receivers of a notice to the holders of such claims to present the same for allowance. The Receivers shall publish such notice at least once a week for a period of six weeks in one or more newspapers published in each of the cities of Philadelphia, Pa.; New York, N. Y.; and Reading, Pa., on the request of any purchaser or purchasers of the railroad property after delivery of possession of such property to such purchaser, and any such claim which shall not be so presented or filed within the period of six months after the first publication of such notice shall not be enforcible against said Receivers nor against any property sold, nor against any purchaser or purchasers, his or their successors or assigns."

And your petitioners further show that the said sale having been duly made, was confirmed by the decree of this Honorable Court upon the twenty-third day of September, 1896, and that in and by said decree it was provided as follows:—

"Subject, however, and upon the express condition, that to the extent that the assets, or the proceeds of assets, in the Receivers' hands shall be insufficient, such purchasers or their assigns shall pay, satisfy and discharge (*a*) any unpaid compensation which shall be allowed by

the Court to the Receivers; (*b*) any indebtedness, obligation or liabilities which shall have been duly contracted or incurred by the Receivers before delivery of possession of the property sold; and (*c*) also any unpaid indebtedness or liability contracted or incurred by the defendants, The Philadelphia and Reading Railroad Company or The Philadelphia and Reading Coal and Iron Company in the operation of the mortgaged property prior to the appointment of the Receivers, and which is prior in lien or superior in equity to said General Mortgage, except such as shall be paid or satisfied out of the income of the property in the hands of the Receivers, or out of the assets or out of the proceeds of assets in their hands, upon the Court adjudging the same to be prior in lien or superior in equity to said mortgage and directing payment thereof, all payments for any such purpose made by the purchasers in advance of the final accounting and discharge of the Receivers to be treated as advances and subject to final adjustment upon such accounting: *Provided, however*, that upon publication by the Special Master, when ordered by the Court, as provided in said decree, of a notice requiring holders of any claims to present the same for allowance, any such claims which shall not be so presented or filed within the period of six months after the first publication of such notice shall not be enforcible against the property sold or against the purchaser, its successors or assigns. And subject also to the payment by said grantees, their successors or assigns, of such sums in cash as may be required in order to pay all costs and expenses of the sale, the compensation of the trustee, and all charges, compensations, allowances and disbursements payable out of the purchase price bid for the premises as the same shall be fixed and allowed by the Court."

And your petitioners further show that the statements called for by the final decree of May 1st, 1896, were duly filed by them with the clerk of this Court, and that after the entry of the decree of confirmation and full compliance with the terms of purchase, to wit, upon the

thirtieth day of November, 1896, the possession of the property in their possession was transferred and delivered by your petitioners to the purchasers, and they have now requested your petitioners to publish a notice to holders of claims to present the same for allowance, but that in view of the fact that by the terms of the order of confirmation such publication is to be made by the Special Master, your petitioners have thought it advisable to obtain from your Honorable Court a confirmation and approval of the proposed form of notice.

And they therefore pray that the Special Master and themselves may be authorized and directed to unite in the publication of the form of notice hereto attached, marked "Exhibit A," and that such notice may be decreed to be in compliance with and a substantial performance of the previous orders of the Court upon this subject.

And your petitioners will ever pray.

JOS. S. HARRIS,
EDWARD M. PAXSON,
JNO. LOWBER WELSH,
Receivers.

THOMAS HART, JR.,
SAM'L DICKSON,
For Receivers.

EXHIBIT A.

Notice to Present Claims.

The Pennsylvania Company for Insurances on Lives and Granting Annuities,

vs.

The Philadelphia and Reading Railroad Company, The Philadelphia and Reading Coal and Iron Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, Receivers.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

April Sessions, 1895.

No. 9.

In Equity.

Under and pursuant to the decree of foreclosure and sale entered herein by the United States Circuit Court for the Eastern District of Pennsylvania, on the first day of May, 1896, and the decree of the said Court of September 23d, 1896, confirming the sale thereunder of the railroad property and franchises covered by the General Mortgage dated January 3d, 1888, of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and the order of said Court made January 11th, 1897.

Notice is hereby given, That the holders of any claims against The Philadelphia and Reading Railroad Company or The Philadelphia and Reading Coal and Iron Company or against the Receivers, which the purchasers of the railroads, properties and franchises described in the decree of May 1st, 1896, may be required to pay as part of the consideration and in addition to the sum bid for such railroads, properties and franchises, to present

such claims, in writing, to the undersigned Receivers for allowance or payment at their office, Room No. 423, Reading Terminal Building, Twelfth and Market Streets, Philadelphia or to the undersigned Special Master at his office No. 606 Chestnut Street, in the city of Philadelphia, and that any such claims which shall not be so presented or filed within a period of six months after the fifteenth day of January, 1897, shall not be enforcible against the said Receivers or against the properties sold under said decrees or against the purchaser of such properties, its successors or assigns.

JOSEPH S. HARRIS,
EDWARD M. PAXSON,
JOHN LOWBER WELSH,
Receivers of the Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company.

THOMAS HART, JR.,
SAMUEL DICKSON,
Counsel.

GEORGE L. CRAWFORD,
Special Master.

PHILADELPHIA, January 11th, 1897.

And now; this eleventh day of January, 1897, the prayer of the petition this day filed by the Receivers is granted, and the proposed form of notice to present claims approved, and the said Receivers and the Special Master are directed to cause the same to be advertised in the manner, and for the time prescribed by the decree of foreclosure and sale of May 1st, 1896.

GEO. M. DALLAS,
Cir. Judge.

RECEIVERS' NOTICE TO PRESENT CLAIMS.

(Copies of proof of publication.)

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } *ss:*

H. K. Hottenstein being duly sworn deposes and says that he is a clerk in the office of the PUBLIC LEDGER, a morning newspaper published daily (except Sundays) in the City of Philadelphia and that the advertisement of which a copy is hereunto attached was inserted in the said newspaper on the following dates, to wit: January 15, 22, 29, February 5, 12, 19 and 26, 1897.

H. K. HOTTENSTEIN.

Sworn and subscribed to before me this 21st day of April A. D. 1900.

CHAS. F. MYERS,
[SEAL] *Notary Public.*

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } *ss:*

James W. Kellett being duly sworn deposes and says that he is a clerk in the office of the NEW YORK HERALD, a paper printed and published in the City and County of New York, and that the advertisement of The Pennsylvania Company for Insurances on Lives and Granting Annuities, as per annexed copy, was published in the said NEW YORK HERALD seven times, to wit: January 15, 22, 29, February 5, 12, 19, 26, 1897.

JAMES W. KELLETT.

Sworn to before me this 25th day of April, 1900.

DULANY HOWLAND,
[SEAL] *Notary Public, City and County of New York.*

PENNSYLVANIA, }
BERKS COUNTY, } ss:

Personally appeared before me Wellington G. Woods, Business Advertising Manager of the READING TELEGRAM, that the attached advertisement appeared in said paper (on January 15, 22, 29, February 5, 12, 19 and 26, 1897).

W. G. WOODS.

Sworn and subscribed before me this 20th day of April, 1900.

W. M. ZECHMAN,
Notary Public.

[SEAL]

The following letter was sent by Mr. Gordon to Mr. Reynolds:—

"U. S. *vs.* READING CO. *et al.*

May 5, 1914.

Jackson E. Reynolds, Esq.,
Counsel Central Railroad Company of New Jersey,
143 Liberty St., N. Y. City.

DEAR MR. REYNOLDS:—Will you furnish a statement to be inserted in the record in the above cause, telling whether the table furnished by you and reprinted at page 364 of the printed record, includes in the total anthracite tonnage for the years stated the anthracite tonnage sold by the Lehigh & Wilkes-Barre Coal Co. to the Central Railroad Company of New Jersey for company supply coal.

Very truly yours,

THURLOW M. GORDON."

In reply, Mr. Reynolds states that he will send to the Examiner the answer of the Coal Traffic Accountant to the above letter, with the understanding that it shall form a part of the Government's record.

The following was furnished to the Examiner:—

"M. A. Koons, Coal Traffic Accountant of the Central Railroad Company of New Jersey, at the request of Counsel for the Government, submitted the following statement in connection with the 'Statement showing anthracite coal tonnage shipped to points on and over the Central Railroad of New Jersey System, furnished by Philadelphia & Reading Railroad, Lehigh and Wilkes-Barre Coal Company, the Lehigh Coal & Navigation Company, and all other shippers for five years ending June 30, 1913,' which statement appears at page 364 of the printed record. 'The figures in this statement include the anthracite tonnage sold by the Lehigh and Wilkes-Barre Coal Company to the Central Railroad Company of New Jersey for Company supply coal.'"

Jackson E. Reynolds, having been duly sworn, was examined as follows:—

By MR. GORDON:

Q. I show you, at page 118 of the printed record (Stenographic Minutes, page 214), Government Exhibit No. 17, being a statement of lateral allowances paid by the Central Railroad Company of New Jersey to the Lehigh Coal and Navigation Company during the period from July, 1910, to December, 1912. It was the custom of the Central Railroad Company of New Jersey during that period to pay lateral allowances to the Lehigh Coal and Navigation Company, was it not? A. It was.

Q. What was the service, if any, rendered by the Lehigh Coal and Navigation Company, for which those allowances were paid? A. These laterals were paid, and are continued to be paid, under the mutual understanding of the tenth covenant of the lease of the Lehigh and Susquehanna Railroad from the Lehigh Coal and Navigation Company to the Central Railroad Company of New Jersey. A part of the consideration for the payment is the enjoyment of the lease, and it is true also that, in further part consideration of the payment of the laterals, the Lehigh Coal and Navigation Company does perform, on the aggregate tonnage

handled per annum, a very large and vital transportation service, in taking cars from the junction point of the Central Railroad Company of New Jersey, with the rails owned by the Lehigh Coal and Navigation Company, and retained by them at the time they made their lease, then known as the Panther Creek Railroad, now known as the Lehigh and New England Railroad—taking cars from that junction point, which is at the north end of the Nesquehoning tunnel, and distributing them through the Panther Creek region, serving nine collieries of the Lehigh Coal and Navigation Company in that region, loading and switching those cars, and returning the loaded cars to the junction point and the weigh scales at Hauto, at the north end of the Nesquehoning tunnel. That, as you will see by scale on the map, could be a distance of approximately seven miles. The average service could hardly be less than three and a half miles in each direction, the empty movement three and a half miles and the loaded movement three and a half miles. It is relatively the same kind of service which was testified to by Mr. Davies, when called by the Government in this case, and for which his testimony shows he desired the Reading to give his company twenty-five cents allowance out of the rate to Harrisburg; and, as nearly as it could be possible to get it, the service in the case is the same as the service in the other, as a general proposition.

Q. These allowances were all given in pursuance of the tenth clause of the lease? A. Yes.

Q. Were services performed in connection with all shipments, or in connection with part of the shipments? A. The Lehigh Coal and Navigation Company has ten collieries, operated under the Lehigh Coal and Navigation Company name. They also have a relationship, of course, with the Alliance Company's collieries. The service is performed at all of their collieries, in the manner I have described, with the exception of the Nesquehoning colliery. The Nesquehoning colliery is accessible directly from the Central Railroad of New Jersey, and, my recollection is, was always accessible also from the Panther Creek Railroad. To what extent the Lehigh and New England Rail-

road operates into the Nesquehoning I am not able to state; I do not know.

Q. The lateral allowances are paid on shipments from this one colliery where you state no services are performed? A. They are.

Q. Does the Lehigh Coal and Navigation Company directly operate the cars and trains of coal itself? A. At the present time?

Q. At the present time. A. My knowledge of that is limited to this, and I cannot speak very definitely about that; the Lehigh Coal and Navigation Company has made some effort—just how earnest it was, I do not know—to have the Lehigh and New England perform that service, or perform the service of taking the empties and returning the loads in through that region on tracks which the Lehigh and New England acquired from the Lehigh Coal and Navigation Company. The matter has been before me as legal adviser to the Jersey Central, and I have declined to technically deal with the Lehigh and New England in the matter, and have said that we must continue to deal with our lessor; and that, if they want to employ the Lehigh and New England to do their work, I have no interest in it, but that we must look to our lessor and will not deal with the Lehigh and New England Railroad on any of that situation. Now what they have done about that, I am utterly unaware. I do not know, practically, how they are handling it, whether they are arranging with the Lehigh and New England for the necessary trackage to have the Lehigh Coal and Navigation Company engine and crew switch those cars, or whether they are doing it through a yardman, the Lehigh and New England Railroad.

Q. Then I understand you to say that, either directly themselves or indirectly through an agent, the Lehigh Coal and Navigation Company does perform services in connection with shipments from nine collieries? A. That is correct, yes, sir.

Q. And from one colliery it performs no services whatever? A. That is also correct.

Q. But it receives lateral allowances for shipments from all those collieries, including the one from which it performs no services? A. It receives lateral allowances on every ton of coal which it ships, no matter whether it comes from the nine collieries where the service is required to reach them, or from the one colliery, the Nesquehoning, where no service is required. I cannot say that these lateral allowances are entirely in return for the service, because it is our belief and understanding, on which we have always acted, that, independently of the service, the tenth covenant requires us to make the lateral allowance.

Q. In other words, do you give a reduction from the rate, as a part of your rental, under the lease? A. I cannot explain that lateral situation any better than Mr. Drinker did, in the Government's case in chief, that the rate is divided into two parts, like any pro rate. The Lehigh Coal and Navigation Company gets a part of that rate from all ten collieries, and the Central Railroad Company of New Jersey gets a part of it. Now the explanation which Mr. Drinker gave of the early history of the making of those rates will be found in the Government's case in chief, and I cannot make any other or different explanation. This is simply a method of perpetuating the Penn Haven basis of rates, which is referred to in the tenth clause, giving the lessor company, which owned the tracks of the Nesquehoning Railroad, that part of the rate.

Q. But I understood you to say that a part of the consideration for these lateral allowances was the lease of the Lehigh and Susquehanna Railroad? A. And branches, including the Nesquehoning Railroad; yes, that is the understanding that we have always acted upon in the matter of the laterals.

Q. And this tenth clause of the lease is not published in the published tariffs? A. In words, you mean?

Q. In words. A. No, sir, it is not.

Q. And this payment of the lateral allowance is due—I think I quote you correctly—to a mutual understanding be-

tween the parties, but not to anything printed in the published tariffs, from which outsiders could tell, in cents, what lateral allowance was being paid? A. The only thing that appears in the tariff—and I am somewhat handicapped from speaking from memory, but I think I can give its substance—is this: that every one of the anthracite coal tariffs of the Jersey Central Railroad, since August 31st, 1906, when the Hepburn Act became effective, contains a note somewhat of this character: "In accordance with the tenth clause of the lease of the Lehigh and Susquehanna Railroad to the Central Railroad Company of New Jersey, which lease will be found of record in the Prothonotary's office in Northampton County, Deed Book ——, page ——, Carbon County, Deeed Book ——, page ——," and so on through the counties through which the road runs, "a lateral allowance is paid out of the within named rates to the Lehigh Coal & Navigation Company." That, in substance and sense, is about all there is there, and, to answer your question affirmatively, there is not any clause or phrase which anywhere in that tariff states what that allowance is in pennies or cents or mills.

Q. Is that tenth clause of the lease filed with the Interstate Commerce Commission? A. I know the lease is in the files of the Interstate Commerce Commission.

Q. Is it filed in the Tariff Bureau? A. No, I think not. I really do not know about that. I do not believe it is.

Q. Is it a long clause? A. It is eight lines long.

Q. And it is not printed, even as a note, or in any manner, in the published tariffs? A. No, sir.

Q. Would the shipments from the tenth colliery of the Lehigh Coal and Navigation Company, in connection with which no services are rendered by the Lehigh Coal and Navigation Company, be approximately one-tenth of the entire shipments? A. I could not answer that.

Q. Would you know whether it was a substantial part? A. Of course, any shipments would be substantial if the colliery is running. How substantial, or what fraction, I could not undertake to say.

I will just add, by way of cross examination on

the record, that, when the Hepburn Bill was passed, I called a meeting of the Lehigh Coal and Navigation people and ourselves to consider this very question, of publishing this tariff, and the publication of a tariff showing those laterals was a rather cumbersome piece of business, as a matter enumerating the allowances to the different destinations, because the lateral varies. There are no shippers in the vicinity who could avail of the tariff condition in any way, as it stands, or as it could stand as a matter of physical geography, and, therefore, as a matter of honest good faith, it was concluded, at the end of that meeting, that all it was necessary for us to do was to be perfectly frank and open about the payment of a lateral, advertise that fact, and put anyone on notice who could be helped or harmed by such a payment, if he could get it, of the circumstances and conditions which led up to it, and put him in a position to avail of it if he thought he could. Nobody could be practically interested in the amount of such an allowance unless he could duplicate the relationship and bring a case under the discrimination clause of the Act, and there has never been the slightest secrecy about the payment of the allowance and the reason for the payment, and a complete reference to the history of it in the tariff. The only reason why the cents were not published was simply that it would make it too cumbersome, and nobody thought it was worth while, because nobody was interested.

By MR. GORDON:

Q. Was the reason that no other shipper of coal could avail himself of the opportunity to receive lateral allowances due to the fact that the occasion for giving the allowance was so defined that it could apply only to the Lehigh Coal and Navigation Company? A. I would not phrase it in that way. I think the reason did not lie in the definition, or the circumscribed language of the tariff at all; it lay deeper than that, that no shipper could duplicate the situation topographically, geographically, physically.

Q. There were other shippers in that general region sending anthracite coal to market, in competition with the Lehigh

Coal and Navigation Company? A. There is no shipper so close to tide as the Lehigh Coal and Navigation Company on the Jersey Central line. The only shippers that there are are up in the Hazleton region, or the Audenried district, a considerable distance above and beyond Hauto or Nesquehoning.

Q. The published tariffs for all shippers, from all portions of the anthracite coal regions, on the Jersey Central to tide are substantially the same, are they not? A. No. There is no differentiation in the rates on the Jersey Central, generally speaking, between the Wyoming region and the Lehigh region as a whole, if that is what you mean.

Q. Yes. A. We do have rates, however, from other lines to the Jersey Central in those regions, that are higher.

Q. You mean two-line hauls? A. Two-line hauls, yes.

Q. But every shipper on the Jersey Central has the same rate from any portion of the anthracite coal region to tide, any shipper, that is, who ships only over the Jersey Central? A. All shippers whose operations are local to the Jersey Central, whether in the Lehigh region or the Wyoming region, have the same rates on the same sizes of coal to the same destination—to tide, that is. I am not informed about New England rates.

Q. The Lehigh Coal and Navigation Company did receive this lateral allowance, which made its rate to tide less than the rates of other shippers local to the Jersey Central? A. That is a conclusion to be reached, if at all, by the Interstate Commerce Commission, or as a result of argument. It is not the conclusion that I would reach. I think their rate was exactly the same as everybody else's rate, and that they were giving, first, a service, and, second, a facility, going back to the old lease of the Lehigh and Susquehanna Railroad, which entitled them to the payments which we made them under that tenth clause, and that it did not have anything to do with the rate.

Q. But the actual money paid by the Lehigh Coal and Navigation Company to the Central Railroad Company of New Jersey for freight charges to tide, would be less per

ton than the actual money payments made by other shippers? A. No, it would not, in my judgment. In other words, you are just going around in a circle. You and I have got to argue that question, and it is a conclusion of law and fact that is not evidence, and my conclusion, if I state it, will be against you here.

Q. Let me put it this way: Did the Lehigh Coal and Navigation Company actually pay to the Central Railroad Company the full freight charges and then receive subsequently a repayment under the tenth clause of the lease? A. I think they did, but I do not think it makes any difference whether they did or not.

Q. I wanted to get the exact manner in which it was done. A. My understanding is that they did, but I do not think that is vital, whether they did or did not. In other words, you and I are working at cross purposes, when I am in the witness chair, because you are asking a question which I would object to as counsel, because it calls for a conclusion, and would not let the witness answer. It is something that must be settled by the Interstate Commerce Commission and by the Courts, and it may be settled in accordance with your view or in accordance with my view; but, until it is settled in accordance with your view, I shall entertain my view and state it as such as an answer on the record, so it is useless to pursue the matter further.

By Mr. Coudert:

Q. The last question asked, I take it, was a question of fact as to the method in which the payments were made? A. And I answered that question, as far as my knowledge of the fact permitted me, that I thought the fact was that they did pay the full rate and then subsequently settlements were made for the lateral allowances. I added that I did not think it material whether it was done in that way, or a settlement made on book balances. My understanding of the fact, however, is as I have given it.

Mr. Gordon stated that he desired a statement from the Central Railroad of New Jersey and from the Philadelphia and Reading Railway showing for calendar years:—

1. Total shipments of anthracite to New York tidewater via Central Railroad for year 1913.

2. Total shipments of anthracite via Philadelphia and Reading Railway to New York tidewater for 1913.

3. Total shipments of anthracite via Central Railroad of New Jersey to Philadelphia tidewater for year 1913.

4. Total shipments of anthracite via Philadelphia and Reading Railway to Philadelphia tidewater for the year 1913.

As to the Government's request, Mr. Reynolds replies that he first notes a technical objection, that the evidence requested is not proper rebuttal, and technically objects to producing it. On the other hand, as a matter of courtesy to Government counsel, he will make every effort to get the statements in time for the record. He expresses a doubt, however, whether he will be able to comply with the third request, merely because of the mechanical difficulties involved in summarizing interline accounting of that character.

The following information, in reply to the above requests, was later furnished to the Examiner:

Statement showing total shipments of anthracite coal via Philadelphia and Reading Railway to New York tidewater for the calendar year 1913:

New York tidewater, 1,583,618.14 tons.

Statement showing total shipments of anthracite coal via Philadelphia and Reading Railway to Philadelphia tidewater for the calendar year 1913:

Philadelphia tidewater, 1,906,437.14 tons.

Statement showing total shipments of anthracite coal via Central Railroad of New Jersey to New York tidewater for the calendar year 1913:

New York tidewater, 2,723,495 tons.

Statement showing total shipments of anthracite coal via Central Railroad of New Jersey to Philadelphia tidewater for the calendar year 1913:

Philadelphia tidewater, 2,064 tons.

Judge Beattie, counsel for the defendant, the Lehigh and Hudson River Railway Company, moves to strike from the record as against the said defendant, all testimony and exhibits not relating or referring to the said company.

Counsel for the Lehigh and Hudson River Railway Company moves to dismiss the petition, suit or proceeding herein, as against said company, upon the ground that no proof has been made, showing or tending to show any violation of law by said company under the allegations of the petition herein.

Counsel for the Lehigh and Hudson River Railway Company moves to dismiss the petition, suit or proceeding herein, as against said company, upon the ground that the ownership of any part of the capital stock of said defendant by any or all of the other defendants herein, is not a violation of any law, and does not justify or permit the maintenance of this suit or proceeding against the said defendant.

Counsel for the Lehigh and Hudson River Railway Company moves to dismiss the petition herein and the suit or proceeding thereon, upon the ground that the said defendant is not a proper or necessary party thereto, and that the allegations of the petition herein and relief sought therein are multifarious, as to the said defendant, and do not justify or permit any relief or decree in this suit in favor of the petitioner against the said defendant.

Testimony closed.

UNITED STATES *v.* READING COMPANY ET AL.

READING COMPANY ET AL. *v.* UNITED STATES.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Nos. 3, 4. Argued October 10, 11, 1916; restored to docket for reargument May 21, 1917; reargued November 20, 21, 1917; restored to docket for reargument June 10, 1918; reargued October 7, 1919.—Decided April 26, 1920.

Regardless of the use made of it, a power resulting, not from normal expansion and legitimate business enterprise, but from deliberate calculated purchase for control, which enables a holding company to dominate two great competing interstate railroad carriers and two great competing coal companies, engaged extensively in mining and selling anthracite coal that must be transported to interstate markets over those railroads, is a menace to and an undue restraint upon interstate commerce within the meaning of the Anti-Trust Act. P. 57.

By a scheme of reorganization executed after the enactment of the

26. Syllabus.

Sherman Anti-Trust Act, all the property of the Philadelphia & Reading Coal & Iron Company, a large producer of anthracite coal controlling about two-fifths of the supply in the largest of the three fields in Pennsylvania where substantially all of the anthracite of the country is found, and all the property of the Philadelphia & Reading Railroad Company, owner of all the capital stock of the Coal Company and of an extensive railroad system over which that company's large output found its way to interstate markets, was delivered into the complete control of the Reading Company. That company became the owner of all the stock of the Coal Company, with additional control over it through fiscal provisions of the reorganization; of all the stock of a new railroad company, the Philadelphia & Reading Railway Company, to which the main railroad was transferred; of all the equipment for operating the railroad, and of ships, terminals, short lines and other property which formed part of the railroad system. Besides entering into two schemes with other carriers and coal companies for suppressing competition, which were declared violations of the Anti-Trust Act in *United States* v. *Reading Co.*, 226 U. S. 324 (see *infra*, p. 49), the Reading Company purchased a controlling interest in the capital stock of the Central Railroad Company of New Jersey—a large carrier of anthracite in competition with the Philadelphia & Reading Railway Company, and owner of over eleven-twelfths of the capital stock of the defendant Lehigh & Wilkes-Barre Coal Company, which in turn owned or had leased a very large acreage in another of the Pennsylvania anthracite fields, and was a competitor of the Philadelphia & Reading Coal & Iron Company; and thereby, and through common officers and directors, the Reading Company acquired and exercised active dominating control over the last two-mentioned companies, its power thus including two of the principal competing producers and two of the principal competing initial carriers, of anthracite, in interstate commerce. There was evidence also of its combining with other carriers to fix excessive flat rates to tidewater, and of special privileges extended by it to the Philadelphia & Reading Coal & Iron Company in the way of financial assistance and forbearance, and of similar dealing between the Central Railroad and Wilkes-Barre Companies.

Held, that the combination both before and after the induction of the Central Railroad Company of New Jersey violated the Sherman Anti-Trust Act, and that the relations between the Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company and the Central Railroad

Company of New Jersey must be so dissolved as to give to each of them a position in all respects independent and free from stock or other control of any of the others. Pp. 43–59.

The combination between the Philadelphia & Reading Railway Company and the Philadelphia & Reading Coal & Iron Company through the Reading Company must also be dissolved, because the transportation thereunder by the Railway of the coal produced by the Coal Company, violates the commodities clause of the Act of June 29, 1906. P. 60.

While the ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted to, not for the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may require. P. 62.

Applying this rule, *held*, that the relation between the Central Railroad Company of New Jersey and the Lehigh & Wilkes-Barre Coal Company, with the former owning over eleven-twelfths of the capital stock of the latter and using the latter as the coal mining department of its organization, violates the commodities clause, and for that reason must be dissolved. *Id.*

In 1871, the Lehigh Coal & Navigation Company, owner of extensive coal-producing properties and of the Lehigh & Susquehanna Railroad, leased the railroad for a rental of one-third of its gross earnings to the Central Railroad Company of New Jersey, the line leased and the line of the lessee not being in competition but the one forming a natural extension of the other into the coal fields. *Held*, that a covenant in the lease, assumed to require the lessor to ship to market over the leased line three-fourths of all the coal which it should produce in the future, was not designed to suppress interstate commerce, did not have that effect, and does not violate the Anti-Trust Act. P. 54.

Covenants in leases of coal lands by the Philadelphia & Reading Coal & Iron Company and Lehigh & Wilkes-Barre Coal Company, obliging the lessees to ship all coal mined by rail routes

designated or to be designated, are *held* unlawful as part of the scheme to control the mining and transportation of coal herein condemned, and their enforcement is enjoined. P. 55.

As to other charges against the Lehigh Coal & Navigation Company, and as respects the Wilmington & Northern Railroad Company, the Lehigh & Hudson River Railway Company, the Lehigh & New England Railroad Company, and the surviving individual defendants, the bill is dismissed without prejudice. *Id.*

226 Fed. Rep. 229, affirmed in part, reversed in part.

THE case is stated in the opinion. Motions to modify the decree were made and denied at this term. *Post*, 478.

The Solicitor General, with whom *The Attorney General* and *Mr. A. F. Myers* were on the brief, for the United States.[1]

Mr. Jackson E. Reynolds, with whom *Mr. Charles Heebner* and *Mr. John G. Johnson* were on the brief, for Reading Company, Philadelphia & Reading Railway Company, and the Philadelphia & Reading Coal & Iron Company.[2]

Mr. Robert W. De Forest, with whom *Mr. Charles E. Miller* was on the brief, for Central Railroad Company of New Jersey.

Mr. Henry S. Drinker, Jr., and *Mr. Abraham M. Beitler* filed a brief on behalf of the Lehigh Coal & Navigation Company.

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[1] At the first and second hearings the case was argued by *Mr. Solicitor General Davis* and *Mr. Assistant to the Attorney General Todd*. *Mr. Attorney General Gregory* and *Mr. Thurlow M. Gordon*, Special Assistant to the Attorney General, also were on the brief.

[2] At the first hearing *Mr. John G. Johnson* argued the case for the Philadelphia & Reading Coal & Iron Company.

Mr. John J. Beattie filed a brief on behalf of the Lehigh & Hudson River Railway Company.

Mr. Wm. Jay Turner filed a brief on behalf of the Lehigh & New England Railroad Company.

The following is a summary of the oral argument for the Reading Company et al.

The appellees are not accused of fixing prices by contract with competitors, bringing about any deterioration in product, acquiring additional coal deposits since 1890, dismantling or abandoning properties, limiting output, exclusive or price controlling sales contracts, monopolization of local dealers, espionage over the business of competitors, partitioning the country into non-competitive districts, discriminating in prices to destroy competitors, adopting unfair business policies, exacting unreasonable prices, deriving excessive profits from the coal business, unfair treatment of employees, or unfair treatment of competitors. Their prices for transportation and for coal have been reasonable, not excessive, "monopoly" prices.

There are in the case three charges: alleged violation of the commodities clause; alleged monopoly in the Schuylkill region; alleged combination in restraint of trade resulting in the Reading's purchase of control of the Jersey Central.

The tests to be applied to determine whether the Reading Railway Company is violating the commodities clause in transporting coal owned by the Philadelphia & Reading Coal & Iron Company at the time of transportation are those laid down in *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, and *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516. These tests are also buttressed by the court's declaration of the general object

of the statute to have been to put an end to the carrier's "opportunity to discriminate in favor of itself against other shippers in the rate charged, the facility furnished or the quality of the service rendered." *Delaware, Lackawanna & Western R. R. Co.* v. *United States*, 231 U. S. 363.

The court is not concerned with the question of who ultimately receives the profit from the sale of the commodity, because it has repeatedly held that the carrier might legally own all of the stock of the corporation which owned the commodity at the time of transportation and thereby receive all the profits from the sale of the same. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 413, 414.

Furthermore, this court, recognizing the fact that in the legislative progress of the commodities clause in the Senate, where it originated, an amendment in specific terms providing that the enactment should embrace common ownership of stock in railroad companies and coal companies by the same stockholders, was rejected (40 Cong. Rec., pt. 7, pp. 7011–7014), has also unequivocally held that such common ownership "cannot be used as a test by which to determine the legality of the transportation of such [a coal] company's coal by the interstate carrier." *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516, 526.

The Reading Companies were in existence long prior to the time the commodities clause went into effect—two of them for 37 years and the third for 12 years. The Reading Railway has never had any title to coal lands, has never undertaken any mining operations and has never been engaged in merchandising coal; and the Reading Railway and the Reading Coal Company have never been parties to any sales agency contract of the kind condemned in the *Lackawanna Case*. These factors, which are the converse of those presented in

the *Lackawanna Case*, differentiate the two cases completely.

The present state of the law places upon the Government the burden of showing, by a preponderance of the proof, that the affairs of the Railway Company and the Coal Company have been so commingled and the distinctions between them so obliterated, as to disregard the fact that they were separate juridical beings; cause them to be one and inseparable, making their affairs indistinguishable; destroy the entity of the Coal Company; and make it a mere puppet subject to the control of the Railway Company and a mere department thereof.

The origin of the holding of the capital stocks of the Coal Company and the Railway Company by the Reading Company cannot be treated as a "mere subterfuge and sham to defeat the commodities clause." The lower court was correct in finding that the reorganization was carried out with scrupulous regard for the law, in entire good faith, and without subterfuge or sham. It was right in its conclusion that the validity of the charter powers of the Reading Companies cannot be impeached; that their right to exist cannot be denied; that complete legislative authority to do the acts they have done cannot be gainsaid, and never has been questioned by the Commonwealth of Pennsylvania, and that the charters of the three companies gave the undoubted right to issue the securities and make the conveyances described.

The ownership of railroad equipment by the Reading Company and the lease thereof to the Railway Company have not been shown to have resulted in giving the latter as a corporation, for its own corporate purposes, "complete power over the affairs of the Coal Company, as if the Coal Company were a mere department of the railroad."

The purchase money mortgage of the Railway Company scrupulously observes the fact that the Railway Company

and the Reading Company are separate juridical beings and in no manner commingles the affairs of the Railway and Coal Companies so as to cause both such corporations to be one for all purposes.

The general mortgage of the Reading Company does not obliterate the distinctions between the Railway Company and the Coal Company and cause them to be one and inseparable.

The Government's evidence and arguments on the extent to which the Coal Company and the Railway Company have officers and offices in common are largely iteration in the past tense of conditions existing more than a decade ago, not only prior to this court's illuminating decision in 1911 in *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, but even before the commodities clause itself went into effect on May 1, 1908. That evidence is clearly immaterial and irrelevant as to conditions now existing. Equitable decrees normally speak in the present tense and are applied to remedy existing evils and not to characterize or condemn past wrongs. Even in an action under the Sherman Act an opportunity might well be afforded for a *locus pœnitentiæ*. *United States* v. *Lehigh Valley R. R. Co.*, 225 Fed. Rep. 399, 403, 404.

The foregoing facts fully justified the court below in finding that there was a *bona fide* separate administration of the affairs of the Coal Company. *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, 274.

Attention is directed to the fact that the two companies employ the same counsel and treasurer, and also have the majority of directors in common. Probably no two employees of modern industrial organizations could do less toward the commingling of the administrative and other affairs of two corporations than the counsel and the treasurer. These incidents are of minor importance and do not affect the question of whether the businesses of the companies are rendered indistinguishable. That was an

issue of fact and the record conclusively establishes that no such result has followed from the joint employment of these two individuals. It is repeatedly shown that the funds and accounts of the two companies are scrupulously kept distinct, and there is no evidence whatever of a commingling of the affairs of the two corporations by their counsel.

The proof of the complete autonomy of the Coal Company and the Railway Company was uncontroverted, and conclusive. An excellent summary of the salient features of the testimony appears in Judge McPherson's opinion below.

In view of the entire autonomy of the three Reading Companies, there is no ground for the contention that the Railway Company is transporting in interstate commerce anthracite coal mined or produced by it, or under its authority, or which it owns in whole or in part, or in which it has any interest, direct, or indirect.

As to the alleged monopoly in the Schuylkill Region:

The Government does not raise the issue as to whether the Coal Company in and of itself is a combination in restraint of interstate commerce or a monopolization thereof. That company was created May 18, 1871, and by its charter it was lawful for any railroad company existing under the laws of the State to subscribe for or purchase its stock, or to purchase or guarantee its bonds. The corporation then owning the Reading Railroad properties immediately purchased all the stock of the Coal Company. The latter then immediately set about the purchase and lease of coal lands, acquiring 80,000 acres before the end of 1872. By the year 1881 the Coal Company controlled 98,500 acres of coal land (or slightly in excess of the acreage alleged in the petition). Shortly afterwards, in 1885, the stockholders deliberately adopted a policy opposed to all further acquisition. Thus on the government theory the close relations alleged to exist

between the mining and transportation properties and their owners have existed for almost half a century (or 20 years before the passage of the Anti-Trust Act); and the Coal Company's title to its present holdings of coal lands was vested in it almost 40 years ago, or 9 years antecedent to the passage of that act. The mining and marketing of coal on the one hand and its transportation on the other are not competitive businesses. The court below, with these factors before it, dismissed the petition in respect of this branch of the case, and this court, on its precedents, we believe, will affirm this action because it holds "the disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. The combination was not unlawful so far as it did no more than put the different groups of non-competing [enterprises] into one control." *United States* v. *Winslow*, 227 U. S. 202, 217, 218.

The Government does not contend that the Coal Company is an unlawful combination or a monopoly, and it cannot be contended that the transportation is competitive with the mining and marketing; the transportation is intermediate between the two and supplements them.

This court, like the court below, will be repelled by the consequences of holding with the Government's contentions. *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32, 45, 46.

There was no secrecy indicating a guilty plan or conspiracy. It was all done pursuant to notices to investors all over the world, in the open, and to meet the financial exigencies of the situation. The plan was adopted by Edward M. Paxson, the receiver, who had just resigned as Chief Justice of the Supreme Court of Pennsylvania and the writer of that court's decision in *Commonwealth* v. *New York, Lake Erie & Western R. R. Co.*, 132 Pa. St. 591. The resulting reorganization was declared valid by the Attorney General of the Commonwealth, January 2, 1897.

The legality of the plan was approved by eleven eminent counsel. The Commonwealth of Pennsylvania, by its statutory policy from 1818, had declared to be normal, and affirmatively encouraged, the close inter-relation of mining, transporting and selling anthracite coal. (Const. 1874, Art. XVII, § 5, adopted in convention, of which Judge Dallas was a member.) It was approved by Judge Dallas and Judge Acheson, of the Circuit Court for the Eastern District of Pennsylvania, contemporaneously with the reorganization. It was regarded as entirely legal by Judges Gray, Lanning and Buffington ten years later. *United States* v. *Reading Co.*, 183 Fed. Rep. 427, 457, 459, 490. It was declared to be lawful by Judges McPherson, Hunt and Buffington twenty years later. *United States* v. *Reading Co.*, 226 Fed. Rep. 229, 266–276.

The facts do not indicate monopoly or combination in restraint of trade. The Coal Company is not charged with such guilt. It produces less than 15 per cent. of tonnage. In the Schuylkill region it has 35 operations and one-half the tonnage. Other producers have 53. On the Reading Railway it does not monopolize production or sales. Of production it has only 65 per cent. In sales it must compete with 116 other shippers on 8 other railroads and 60,000,000 tons of competitive tonnage because the Pennsylvania Railroad reaches every community reached by the Reading Railway and makes joint rates with every other anthracite railroad. At tidewater and all distant points it meets the competition of the entire production. The court below unanimously supports the foregoing conclusion. 226 Fed. Rep. 270–271.

The Reading Railway cannot be treated as a monopoly. Its transportation status in the Schuylkill region has been practically the same for 50 years. The Government alleges no acquisition of other carriers there since 1870. Its share of total anthracite transportation is less than 19 per cent; the Lehigh Valley Railroad's is greater. It

does not monopolize the Schuylkill region. It serves 63 collieries, 11,500,000 tons; other railroads serve 34 collieries, 7,000,000 tons. It does not monopolize the collieries it serves. Built in 1833, it has the natural advantages of a pioneer—occupation of passes, and possession of best grades. It serves the region admirably. It encounters the competition of the total tonnage in all markets as does the Coal Company.

The Reading Company is not a monopoly or combination in restraint of trade. It merely coördinates and integrates the non-competitive and complementary businesses of mining, transporting and merchandising anthracite coal, thereby promoting and stimulating interstate trade and commerce. No vice exists in including transportation, because its chief competitors enjoy a like advantage, and government regulations preclude abuse in employing transportation facilities.

There is no basis for the decree requested by the Government, tearing down an investment of $300,000,000, made originally 50 years ago, when the titles vested, and upon the stability of which investors have justifiably relied for a generation,—authorized by state statutes, approved by state officers and courts, reorganized under supervision of federal courts 23 years ago, and approved unanimously by circuit judges in 1915.

The purchase of the Jersey Central stock was a normal industrial development—a defensive measure with no intent to unduly suppress competition.

The railroads combined were not competing in the sense of Mr. Justice Day's definition in the *Union Pacific Case*. One was never striving for traffic which the other was seeking to gain. 226 U. S. 87. They did not render service to the same shipper, *id.* 87, nor cater to demands of identical patrons. *Id.* 88. They were not engaged in the same carrying trade from the same point of origin to the same destination. *Id.* 99. They were, on the con-

trary, complementary and supplementary, one to the other, in the sense described in this court's opinion respecting the form of decree permitting the combination of the Union Pacific and Central Pacific. If, as a fact, they are thus supplementary the Government concedes the propriety of their combination.

Even if the Government's theory, that the two roads are competitive because both transport anthracite, be indulged; nevertheless their unification was valid because "the extent of the control thereby secured over instrumentalities which commerce is under compulsion to use," under the tests laid down in *United States* v. *St. Louis Terminal*, 224 U. S. 383, 394, 395, "left the competitive conditions in the coal carrying business very slightly affected by the elimination of competition between the Central and the Philadelphia and Reading." 183 Fed. Rep. 488, 490.

The Government's theory of competition is unsound. It makes all carriers competitive, and is contrary to the settlement in the *Union Pacific Case*. Its theory of competition is impossible of application. No court can discover the necessary directness of relationship of cause and effect to enable it to say that the abatement of competition of such an intangible character necessarily results in a case of unlawful restraint. This impossibility arises from the factors of uncertainty, speculation and remoteness, illustrated by the extent of competition of anthracite coal with other fuels; by the situation in the New England market, where 70,000,000 tons are in potential competition, and there are numerous uncontrolled rail and water routes, the Reading handling only 3½ per cent. of the potential supply; and by similar conditions at New York and elsewhere—even on the Reading Railway itself.

But even according to the government theory, competition was unaffected. The Central did not reach the Reading territory, and competition was continued by eight

other lines in close proximity to the Central and Reading. See 183 Fed. Rep. 457, 488, 490. The vital question is not the amount of competition suppressed, but the amount remaining. If, as here, the competitors remaining are numerous, large, and powerful the restriction of competition cannot be deemed undue. The issue is one of fact and not of law and must be decided on the evidence, not on theory or speculation. The evidence covering the period since 1901 when this combination was formed shows the facts to be that the Reading's powerful competitors have increased their anthracite traffic by much greater percentages than has the Reading; that any diminution of the Reading's service to the public or attempted restraint on interstate trade would be frustrated immediately by the preponderant competitive power of its eight powerful rivals; that the public has been benefited for any loss of competition resulting from the combination by the more than compensating advantage derived from the upbuilding of the half dozen through routes for freight and passenger traffic competing with the Pennsylvania Railroad. This court would not be justified in destroying these routes and their advantage to the public merely to guard against a speculative possibility of injury which the evidence shows cannot ensue. In view of its decision in the *St. Louis Terminal Case*, this court should hold the lower court's view of the evidence,—considering the lessons of the war as to what restrains trade, the joint operation of railroads, and the provisions of impending railroad legislation.

As for the Coal Companies, the Reading Company's influence over the Wilkes-Barre Company was only incidental and negligible. There is no evidence of a motive to control production. Competition was practically unaffected, and the management of the two companies was not amalgamated.

The Reading Company did not create a monopoly or

combination in restraint of the anthracite trade in 1901. The trade as a whole has expanded; the number of employees, their employment and earnings have increased; and production has kept pace with population.

The Reading did not acquire in 1901 sufficient power to monopolize or restrain the trade had it sought to do so. The combined business of the two coal companies was then only one-fourth of the total business, and in the interim has shrunk until now it is only one-fifth. It does not now possess the power to monopolize or restrain the trade even if it wished to do so.

If the Government's most extravagant contention had been sustained by proof, their criticism of the coal land holdings makes no case presently calling for the interposition of the action of this court. It will be time enough to destroy such a monopoly when it appears and when it has gained power to injure the public. Now the court should deal only with the present actualities. By the time that such a monopoly arises, if it ever does, it may be that the public policy will foster it, or we may have a nationalization of all mines.

Finally, the Government's contentions now are inconsistent with its attitude in the *Harvester Case*. On November 2, 1918, the Department of Justice consented to a decree in that case in and by which, in order to "restore competitive conditions and bring about a situation in harmony with law," the company was only required to sell such of its lines of harvesting machines as would leave it at least 66 per cent. of the industry.

Mr. JUSTICE CLARKE delivered the opinion of the court.

These are appeals from a decree entered in a suit instituted by the Government to dissolve the intercorporate relations existing between the corporation defendants, for the alleged reason that through such relations they

constitute a combination in restraint of interstate commerce in anthracite coal, and an attempt to monopolize or a monopolization of such trade and commerce in violation of the first and second sections of the Anti-Trust Act of Congress, of July 2, 1890, c. 647, 26 Stat. 209; and also for the alleged reason that the defendants, Philadelphia & Reading Railway Company and Central Railroad Company of New Jersey are violating the commodities clause of the Act of Congress of June 29, 1906, c. 3591, 34 Stat. 585, by transporting over their lines of railroad, in interstate commerce, coal mined or purchased by coal companies with which they are associated by stock ownership.

It will contribute to brevity and clearness to designate the defendant corporations as follows: Reading Company, as the Holding Company; Philadelphia & Reading Railway Company, as Reading Railway Company; Philadelphia & Reading Coal & Iron Company, as Reading Coal Company; Central Railroad Company of New Jersey, as Central Railroad Company; Lehigh & Wilkes-Barre Coal Company, as Wilkes-Barre Company; Lehigh Coal & Navigation Company, as Navigation Company.

Practically all of the anthracite coal in this country is found in northeastern Pennsylvania, in three limited and substantially parallel deposits, located in valleys which are separated by mountainous country. For trade purposes these coal areas are designated: the most northerly, as the Wyoming field, estimated to contain about 176 square miles of coal; the next southerly, as the Middle or Lehigh field, estimated to contain about 45 square miles, and the most southerly, as the Schuylkill field, estimated to contain about 263 square miles of coal.

The annual production of the mines in these three fields in 1896 was about 43,640,000 tons and in 1913 it slightly exceeded 71,000,000 tons. The chief marketing centers for this great tonnage of coal are New York, distant by rail from the fields about 140 miles, and Philadelphia, distant

about 90 miles. From these cities it is widely distributed by rail and water throughout New York and New England, and to some extent, through the South.

Such a large tonnage was naturally attractive to railroad carriers, with the result that the Wyoming field has six outlets by rail to New York Harbor, viz: The Central Railroad of New Jersey and five others, known as initial anthracite carriers. The Lehigh field has three such rail outlets, but the largest, the Schuylkill field, has only two direct rail connections with Philadelphia and New York, viz: The Reading and the Pennsylvania Railroads. Outlets by canal to Philadelphia and tidewater, at one time important, may here be neglected.

This description of the subject-matter and of its relation to the interstate transportation system of the country will suffice for the purposes of this opinion. It may be found in much greater detail in the cases cited in the margin.[1]

The essential claims of the Government in the case have become narrowed to these, viz:

First: That the ownership by the Holding Company of controlling interests in the shares of the capital stocks of the Reading *Railway* Company, of the Reading Coal Company and of the Central Railroad Company, constitutes a combination in restraint of interstate trade and commerce and an attempt to monopolize and a monopolization of a part of the same in violation of the Anti-Trust Act of July 2, 1890.

Second: That the Holding Company in itself constitutes a like violation of the act.

Third: That certain covenants and agreements between the Central Railroad Company and the Navigation Com-

[1] *United States* v. *Reading Co.*, 183 Fed. Rep. 427; *United States* v. *Reading Co.*, 226 Fed. Rep. 229; *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366; *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257; *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516; *United States* v. *Reading Co.*, 226 U. S. 324.

pany contained in a lease, by the latter to the former, of the Lehigh & Susquehanna Railroad, constitute a like violation of the act.

Fourth: That the transportation in interstate commerce by the Reading Railway Company and by the Central Railroad Company, of coal mined or purchased by the coal companies affiliated with each of them constitutes a violation of the commodities clause of the Act to Regulate Commerce.

Pursuant to the provisions of the Act of June 25, 1910, c. 428, 36 Stat. 854, the case was heard by three Circuit Judges of the Third Circuit, who while holding against the contention of the Government on many of the prayers for relief in the bill, some generally and some without prejudice, also held that the Reading Coal Company and the Wilkes-Barre Coal Company were naturally competitive producers and sellers of anthracite coal and that their union through the Holding Company and the Central Company constituted a combination in restraint of trade within the Anti-Trust Act, and for this reason the Central Company was ordered to dispose of all the stock, bonds and other securities of the Wilkes-Barre Coal Company owned by it and was enjoined from requiring the Coal Company to ship its coal over the lines of the Central Company.

The court also held that clauses in mining leases by the Reading Coal Company and by the Wilkes-Barre Coal Company, and their subsidiaries, requiring the lessees to ship all coal produced, over roads, named or to be designated, were unlawful and void.

The case has been appealed by both parties and is before us for review on all of the issues as we have thus stated them.

Reference to the history of the properties now controlled by the Holding Company will be of value for the assistance it will be in determining the intent and purpose

with which the combinations here assailed were formed. *Standard Oil Co.* v. *United States*, 221 U. S. 1, 46, 76.

The Philadelphia & Reading *Railroad* Company was chartered by special act of the Pennsylvania General Assembly in 1833, and it conducted the business of a railroad carrier prosperously for about thirty years, when, as its annual reports show, it embarked upon the policy of attempting to control the anthracite tonnage of the Schuylkill field by acquiring extensive ownership of coal lands. Thus, the report of the Company for 1871 contains the following:

"Up to this time about 70,000 acres of the best anthracite coal lands in Pennsylvania have been acquired and will be held by an auxiliary company, known as the Philadelphia and Reading Coal and Iron Company, of which the Philadelphia and Reading Railroad Company *is the only stockholder*. The result of this action has been to secure—and *attach to the company's railroad*—a body of coal land capable of *supplying all the coal-tonnage that can possibly be transported over the road for centuries.*"

And this is from the report for 1880:

"The transportation of coal has always been a source of great profit to the railroad company, and the only doubt in the past about the permanency of the earning power of the company as a transporter was due to the *fear that rival companies would tap the Schuylkill region*, and divert the coal tonnage to their own lines. *This danger was happily averted by the purchase of the coal lands.*"

And this from the report of 1881:

"The coal estates of the Philadelphia and Reading Company . . . consist of 91,149 acres (142 square miles) of coal lands, *which is sixty per cent of all the anthracite lands in the Schuylkill district, and thirty per cent of all in Pennsylvania.*"

This area of coal lands had increased by 1891 to 102,573 acres, of which the report said:

"The coal lands comprise in extent about 33 per cent of the entire anthracite coal fields of the State, and taking into account the aggregate thickness of the veins on the company's lands, and the greater proportionate depletion of the estates in the other regions which has been going on for many years, it must be conceded that we have *at least 50 per cent of the entire deposit remaining unmined.*"

As if in further pursuit of this now settled purpose, in the following year, 1892, the Reading Railroad Company leased the Lehigh Valley Railroad and the Central Railroad of New Jersey for 999 years. These were both anthracite carriers, competing with the Reading and each had an important coal mining subsidiary company. But the lease by the Central Railroad Company was assailed in the New Jersey courts and all operations under it were enjoined, with the result that both leases were abandoned.

It is obvious that these reports show an avowed and consistently pursued purpose (not then prohibited by statute) to secure by purchase a dominating control over the coal of the Schuylkill field and over the transportation of it to market.

In the large financial operations incident to the expansion policy thus described, bonds were issued, secured by a mortgage on all of the property of the Reading Railroad Company and of the Reading Coal Company. In 1893 there was default in the payment of interest on these bonds and receivers were appointed who operated both properties until 1896 when they were sold to representatives of the creditors and stockholders of the two companies, and under a scheme of reorganization, the validity of which is assailed in this suit, both properties were transferred to three corporations in the manner now to be described:

1st. To the Reading *Railway* Company, a corporation newly organized under the laws of Pennsylvania, were allotted about 1,000 miles of the railroad (but none of

the equipment) which had been owned or leased by the former Reading *Railroad* Company. The capital stock of this company was fixed at $20,000,000 and it issued $20,000,000 of bonds, all of which were given to the Holding Company. The property thus transferred was valued, in the representations made at the time to the New York Stock Exchange, at $90,000,000. In 1896 this railroad carried in excess of 9,000,000 tons of anthracite,—more than one-fifth of the then total production of the country. But by the plan of reorganization adopted it was disabled from performing its functions as a carrier, except with the aid of the Holding Company, for all of the equipment, engines, cars and ships, owned by the former Railroad Company, and its tidewater terminals at Philadelphia and on New York Harbor, were allotted to the Holding Company.

2nd. By the decree of sale the Reading Coal and Iron Company was released from its former obligations and to it thus freed the principal part of the property (coal and other), owned by it before the sale, was allotted and re-transferred upon condition, that it would deliver all of its capital stock to the Holding Company, would become co-obligor with that company on bonds to be issued, and would join with it in executing a mortgage for $135,000,000 on all of its property to secure such bonds. This company thus came into possession of 102,573 acres of anthracite lands, owned and leased,—almost two-thirds of the entire acreage of the Schuylkill coal field,—stocks and bonds in other coal companies, coal in storage and other property, all of the estimated value of $95,000,000.

3rd. To serve the purposes of the intended Holding Company, a charter granted in 1871 by special act of the General Assembly of Pennsylvania, but unused for twenty years, was utilized. This charter was of the class denominated "omnibus" by the Supreme Court of Penn-

sylvania, and in terms it authorized the company to engage in, or control, almost any business other than that of a bank of issue,—this broad charter was the occasion for making use of the company in this enterprise. The corporate name was changed to "Reading Company," its capital stock was increased from $100,000 to $140,000,000, and the purchasers at the receivers' sale allotted and transferred to it railroad equipment, real estate, colliers and barges, formerly owned by the Reading *Railroad* Company, together with stocks which gave it control of more than thirty short line railroads, aggregating 275 miles of track, and other property of large value, in addition to all of the bonds and stock of the new Reading *Railway* Company and all of the stock of the Reading Coal Company.

The result of this intercorporate transfer of the property, owned before the reorganization by the Reading *Railroad* Company and the Reading Coal and Iron Company, was that the Holding Company without any outlay—solely because the creditors and stockholders of the former Reading Railroad Company and of the Reading Coal Company desired to establish the proposed scheme for control of the properties formerly owned by the two companies—became the owner of the title to railway equipment, real estate, colliers and barges of an estimated value of $34,400,000; plus all of the capital stock and bonds of the new Railway Company, $40,000,000; plus all of the capital stock of the Coal Company, $8,000,000, and a contract by that company to mortgage, for the use of the Holding Company, its entire property; plus other stocks, bonds and mortgages owned by the former Railroad Company of the estimated value of over $38,000,000,—making a total value, as represented at the time to the New York Stock Exchange, of $193,613,000.

Thus, this scheme of reorganization, adopted and exe-

cuted six years after the enactment of the Anti-Trust Act, combined and delivered into the complete control of the board of directors of the Holding Company all of the property of much the largest single coal company operating in the Schuylkill anthracite field, and almost one thousand miles of railway over which its coal must find its access to interstate markets. This board of directors, obviously, thus acquired power: to increase or decrease the output of coal from very extensive mines, the supply of it in the market, and the cost of it to the consumer; to increase or lower the charge for transporting such coal to market; and to regulate car supply and other shipping conveniences, and thereby to help or hinder the operations of independent miners and shippers of coal. This constituted a combination to unduly restrain interstate commerce within the meaning of the act. *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61.

Obviously, also, it made the Coal Company and the Railway Company mere agents or instrumentalities of the Holding Company—the mining and transportation departments of its business—for producing, purchasing, and selling coal and for transporting it to market. The Reading *Railway* Company and the Reading Coal Company each had thereafter but one stockholder,—the Holding Company—and their earnings were to be distributed not in proportion to the shares of their capital stocks, aggregating $28,000,000, but were to go to the creditors and shareholders of the Holding Company, with its mortgage debt of $135,000,000 and its capital stock of $140,000,000. The Holding Company thus served to pool the property, the activities and the profits of the three companies. *Northern Securities Co.* v. *United States*, 193 U. S. 197, 327, 362.

It will be profitable to consider next what use was made of the great power thus gathered into the one Holding Company.

In 1898 this Holding Company entered into a combination with five other anthracite carrying railroad companies to prevent the then contemplated construction of an additional line of railway from the Wyoming field to tidewater, which independent miners and shippers of coal were promoting for the purpose of securing better rates on their coal to the seaboard. In a mere holding company, the Temple Iron Company, all six carriers combined, as stockholders for the purpose of providing $5,000,000 with which the properties of the chief independent operators, Simpson and Watkins, were purchased and thereby the new railroad project was defeated. The president of the Holding Company was active in the enterprise and that company, although only one of six, became responsible for thirty per cent. of the required financing. In *United States* v. *Reading Co.*, 226 U. S. 324, 351, this court characterized what was done by this combination, under the leadership of the Holding Company, in these terms:

"The New York, Wyoming & Western Railroad Company was successfully strangled, and the monopoly of transportation collectively held by the six defendant carrier companies was maintained."

And, again, at p. 355:

"We are in entire accord with the view of the court below in holding that the transaction involved a concerted scheme and combination for the purpose of restraining commerce among the States in plain violation of the Act of Congress of July 2, 1890."

About the year 1900 the Holding Company and many other initial anthracite carriers and their controlled coal companies, pursuant to an agreement with each other, made separate agreements with nearly all of the independent producers of coal along their lines, to purchase at the mines "all the anthracite coal thereafter mined from any of their mines now opened or operated or which might thereafter be opened and operated," and to pay therefor

65% of the average price of coal prevailing at tidewater points at or near New York, computed from month to month. In the case above cited, this court discussed these contracts and declared: that they were made for the purpose of eliminating the competition of independent operators from the markets and thus removing "a menace to the monopoly of transportation to tidewater which the defendants collectively possessed"; that before these contracts, there existed not only the power to compete but actual competition between the coal of the independents and that produced by the buying defendants, but that after the contracts were made "such competition was impracticable"; that the case fell well within not only the *Standard Oil* and *Tobacco Cases*, 221 U. S. 1, 106, but was of such an unreasonable character as to be "within the authority of a long line of cases decided by this court;" and finally that the defendants had combined, by and through the instrumentality of the 65% contracts with the purpose and design of unlawfully controlling the sale of the independent output of coal at tidewater.

Thus, this court held that once within two years and again within four years after it was organized, this Holding Company used the great power which we have seen was centered in its board of directors, by adroit division of property and of corporate agency, for the purpose of violating, in a flagrant manner, the Anti-Trust Act of 1890.

Almost immediately after the two attempts to monopolize the trade in anthracite thus condemned by this court, the Holding Company, in January, 1901, purchased a controlling interest in the capital stock of the Central Railroad Company. When this suit was commenced that company was operating 675 miles of track, over which it carried in 1913, 10,783,000 tons of anthracite,—almost one-half of its total freight traffic. Its capital stock was then $27,436,000 and its funded debt was $46,881,000.

This Central Company owned, at the time, in excess of

eleven-twelfths of the capital stock of the Wilkes-Barre Coal Company, with a capital stock of over $9,000,000 and a funded debt of about $17,000,000. And that company owned or had leased in excess of 14,000 acres of coal bearing lands—13,000 acres in the Wyoming field—and in the year ending June 30, 1913, it shipped from its lands thus owned or controlled, 6,243,000 tons of coal, which was sold for over $20,000,000.

Immediately after this purchase, the president of the Holding Company, Mr. Baer, was made president of the Central Railroad Company and of the Wilkes-Barre Coal Company, and remained such until his death, after the commencement of this suit, and from one-third to one-half of the directors of each company were thereafter chosen from the board of the Holding Company. Thus from the time of this purchase both companies have been actively dominated by the Holding Company management.

It is argued that the Central Railroad, thus acquired, and the Reading system were not competitors, but this question is put beyond discussion by the testimony of Mr. Baer, the president of the Reading Company, and his immediate predecessor in office, Mr. Harris. The former testified:

"Q. You are president of the defendants, the Reading Company, Philadelphia and Reading Railway Company, Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey, the Lehigh and Wilkes-Barre Coal Company and the Temple Iron Company?

"A. I am. . . ."

"Q. What do you regard as the competitors of the Philadelphia and Reading now in New York Harbor, as to anthracite coal? . . .

"A. All the companies that ship to New York. They would be the Pennsylvania Railroad, the Lehigh Valley, the Delaware and Lackawanna, the Delaware and Hudson,

the Erie, Ontario and Western. I guess those are all the roads leading to New York directly or indirectly. [He did not name the Central Company because it was a part of the Reading system when he testified.]"

"Q. Those roads are all carrying anthracite coal to the New York harbor?

"A. Yes, sir."

"Q. And you regard them as competitors who must be considered in fixing rates?

"A. Yes, sir; unquestionably."

Mr. Harris testified:

"Q. During the time that you were president of the Philadelphia & Reading Railroad Company, from 1893 to 1901, what were the competitive roads in the coal trade with which you came in competition?

"A. We came in competion with all the roads that were carrying coal from Pennsylvania."

"Q. Name the principal ones in reference to carrying coal from the coal mines to New York harbor.

"A. The Reading, the Lehigh Valley, *the Central Railroad of New Jersey*, the Delaware, Lackawanna and Western, the Erie, and the Pennsylvania Railroad."

That the Reading Coal Company and the Wilkes-Barre Coal Company were competitors before the latter passed under the control of the Holding Company is obvious, but Mr. Baer put this also beyond dispute by testifying:

"Q. Prior to 1901 were the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Company competitors as sellers of coal in New York harbor?

"A. Yes; and they are today."

"Q. And generally throughout the eastern territory they were competitors at that time?

"A. Yes, sir; through that northern territory. Not in this territory, nor in the southern."

Thus, by this purchase, the Reading Holding Company

acquired complete control, not only of one of the largest competitive anthracite carriers, but also of one of the largest competitive coal producing and selling companies, in the country. The anthracite tonnage of the Central and Reading Railway Companies thus combined, exceeded, at the time, 18,000,000 tons,—over one-third of the then total production of the country,—and the revenue derived from it was more than one-third of the total earnings of the two railroad companies.

In 1915 the Interstate Commerce Commission concluded an investigation of the "Rates, practices, rules and regulations governing the transportation of anthracite coal," which had been in progress for three years. The eleven initial anthracite carriers which have lines penetrating the coal producing region were required to furnish special reports as to their anthracite coal transportation operations, and they appeared and participated in the hearing. The result of this exhaustive investigation was that the Commission found: that since about 1901, with variations and exceptions which are negligible here, the carriers have had the same fixed and flat rates to tidewater, regardless of the distance and character of the haul; that these rates were the result of coöperation or combination among the carriers; and that they were excessive to such an extent that material reductions by all of the carriers were ordered, including, of course, those of the Central and Reading companies. The Commission also found, and this appears in the record of this case, that the Reading Coal Company had never paid any dividends on its stock, and that, while the books of the Holding Company showed the Coal Company to have been indebted to it in a sum exceeding $68,000,000 for advances of capital made by the Reading *Railroad* Company before the reorganization in 1896, it has paid interest thereon only occasionally and in such small amounts that up to 1913 it fell short by more than $30,000,000 of equaling 4% per

annum on the indebtedness. In the meantime advances of large sums had been made by the Holding Company to the Coal Company and unusual credits had been allowed the latter in the payment of its freight bills. This dealing of the Holding Company with the Reading Coal Company, and similar dealing of the Central Company with the Wilkes-Barre Coal Company and the Navigation Company are denounced by the Commission as unlawful discrimination against other shippers of coal over the rails of these two companies, and, obviously, such favoritism tends to discourage competition and to unduly restrain interstate commerce.

Upon this history of the transactions involved, not controverted save as to some findings of the Interstate Commerce Commission, we must proceed to judgment, and very certainly it makes a case calling for the application of repeated decisions of this court, which clearly rule it.

It will be convenient to first dispose of several minor contentions.

In 1871 the Navigation Company leased the Lehigh & Susquehanna Railroad, which it owned, to the Central Railroad Company, by an instrument containing a covenant which the Government claims requires the Navigation Company to ship to market over the leased line three-fourths of all of the coal which it should produce in the future. This covenant has been amended and supplemented by several agreements but not so as to essentially modify it with respect to the contention we are to consider.

It is argued that this covenant necessarily imposed an undue restriction upon the Navigation Company in selecting its markets and in shipping its coal, in violation of the Anti-Trust Act.

It is not entirely clear that the covenant will bear the restrictive interpretation as to shipments which the

Government puts upon it, but, assuming that it may be so interpreted, nevertheless, the conditions and circumstances of the case considered, the result contended for cannot be allowed.

When the lease was made, in 1871, the Central Railroad extended from Jersey City to its western terminus at Phillipsburg, New Jersey, and it was without access to the coal fields. The Lehigh and Susquehanna Railroad was about 100 miles in length and extended from Phillipsburg into the Wyoming field, where the Navigation Company owned extensive coal producing properties and mines. The lines of the two companies were in no sense competitive, but, on the contrary, the Lehigh and Susquehanna line served as a natural extension of the Central Company's lines to the great tonnage producing coal districts. The rental to be paid was one-third of the gross earnings of the railroad and it was natural and "normal" that the lessor should desire that the traffic should continue to be as large as possible. Plainly this covenant was not written with the purpose of suppressing interstate commerce and the history of its operation shows that, instead of suppressing it, it has greatly promoted it. The claim is quite too insubstantial to be entertained and the decree of the District Court with respect to it will be affirmed and the bill, as to it, dismissed.

In many leases for the operation of coal producing lands the Reading Coal Company and the Wilkes-Barre Coal Company incorporated a covenant that the lessee should ship all coal mined by rail routes, which were named or which were to be designated. Since this covenant was resorted to as a part of the scheme to control the mining and transportation of coal, which is condemned as unlawful in this opinion, the decree of the District Court enjoining the lessors and the other defendants herein from attempting to enforce such covenants will be affirmed.

The other charges against the Lehigh Coal and Navi-

gation Company and the case stated in the bill with respect to the Wilmington & Northern Railroad Company, the Lehigh & Hudson River Railway Company, and the Lehigh & New England Railroad Company are substantially abandoned in the Government's brief and, having regard to the results arrived at with respect to the principal defendants, the ends of justice will be best served by dismissing the bill as to all of these defendants, without prejudice, as was done by the District Court as to all but the Wilmington and Northern Railroad Company, as to which the dismissal was unqualified. A majority of the individual defendants have died since the suit was instituted and their successors in office have not been made parties, and, since the conclusion to be announced can be given full effect by an appropriate decree against the corporation defendants, the case as against the remaining individual defendants need not be considered, and as to them the bill will be dismissed without prejudice.

We are thus brought to the consideration of what the decree shall be with respect to the really important defendants in the case, the three Reading companies, the Central Railroad Company of New Jersey and the Wilkes-Barre Coal Company.

Before the reorganization of 1896 the gathering of more than two-thirds of the acreage of the Schuylkill field into the control of the two Reading Companies was, as their reports show, for the frankly avowed purpose, then not forbidden by statute, of monopolizing the production, transportation and sale of the anthracite coal of the largest of the three sources of supply.

When in 1896 the problem was presented of reorganizing the financial affairs of the two companies, it was not solved, as it might have been, by creating separate coal and railroad companies to conduct independently interstate commerce in the two departments to which their railroad and coal properties were adapted, but, on the

contrary, and very obviously for the purpose of evading the provision of the constitution of Pennsylvania prohibiting any incorporated common carrier from, directly or indirectly, engaging in mining "articles" for transportation over its lines (Constitution of Pennsylvania, 1874, Art. 17, § 5), and also of evading the provisions of the Federal Anti-Trust Act against restraining and monopolizing interstate commerce, resort was had to the holding company device, by which one company was given unrestricted control over the other two, with the power, inherent in that form of organization, of continuing and carrying forward the restraint and monopoly which had previously been acquired over that large volume of interstate commerce which was to be conducted by the coal and railroad companies.

Again, when in 1901 a rivalry, imaginary or real, arose for the control of the Central Railroad Company, the Holding Company, regardless of the law, did not hesitate to purchase control of that great competing anthracite coal carrying system, with its extensive coal owning and mining subsidiary. This acquisition placed the Holding Company in a position of dominating control not only over two great competing interstate railroad carriers but also over two great competing coal companies, engaged extensively in mining and selling anthracite coal, which must be transported to interstate markets over the controlled interstate lines of railway.

Again, and obviously, this dominating power was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate, calculated purchase for control.

That such a power, so obtained, regardless of the use made of it, constitutes a menace to and an undue restraint upon interstate commerce within the meaning of the Anti-Trust Act, has been frequently held by this court.

Thus, in *Northern Securities Co.* v. *United States*, 193 U. S. 197, 327, when dealing with a holding company, such as we have here, this court, in 1903, held:

"No scheme or device could more certainly come within the words of the act—'combination in the form of a trust or otherwise . . . in restraint of commerce among the several States or with foreign nations,'—or could more effectively and certainly suppress free competition between the constituent companies. . . . *The mere existence of such a combination and the power acquired by the holding company as its trustee, constitute a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect,* and which the public is entitled to have protected."

And again, in *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, 88, decided nine years later, in 1912, this court held:

"The consolidation of two great competing systems of railroad engaged in interstate commerce by transfer to one of a dominating stock interest in the other creates a combination which restrains interstate commerce within the meaning of the statute, because, in destroying or greatly abridging the free operation of competition theretofore existing, it tends to higher rates. . . . Nor does it make any difference that rates for the time being may not be raised and much money be spent in improvements after the combination is effected. *It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act.*"

It will suffice to add that this doctrine was referred to as the settled conclusion of this court, in 1914, when discussing a similar state Anti-Trust Act in *International Harvester Co.* v. *Missouri*, 234 U. S. 199, 209, it was said:

"The specification under this head is that the Supreme Court [of Missouri] found, it is contended, benefit—not

injury—to the public had resulted from the alleged combination. Granting that this is not an overstatement of the opinion the answer is immediate. *It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intention and has had some good effect.* . . . The purpose of such statutes is to secure competition and preclude combinations which tend to defeat it."

Thus, this record clearly shows a group of men selecting the Holding Company with an "omnibus" charter and not only investing it by stock control with such complete dominion over two great competing interstate carriers and over two great competing coal companies extensively engaged in interstate commerce in anthracite coal as to bring it, without more, within the condemnation of the Anti-Trust Act, but it also shows that this power of control was actually used, once successfully, to suppress the building of a prospective competitive railway line, and a second time, successfully until this court condemned the 65% contracts as illegal, to suppress the last prospect of competition in anthracite production and transportation. To this it must be added that up to the time when this suit was commenced this Holding Company had continued in active, dominating control of the Reading Railway Company and of the competing Central Railroad system, and also of the two coal companies, thus effectually suppressing all competition between the four companies and pooling their earnings. It is difficult to imagine a clearer case and in all essential particulars it rests on undisputed conduct and upon perfectly established law. It is ruled by many decisions of this court, but specifically and clearly by *United States* v. *Union Pacific R. R. Co., supra.*

For flagrant violation of the first and second sections of the Anti-Trust Act, the relations between the Reading

Company, the Reading Railway Company and the Reading Coal Company and between these companies and the Central Railroad Company of New Jersey must be so dissolved as to give to each of them a position in all respects independent and free from stock or other control of either of the other corporations.

With respect to the contention that the commodities clause of the Act of June 29, 1906, 34 Stat. 584, 585, is being violated by the Reading Railway Company and the Central Railroad Company:

The Circuit Judges centering their attention: upon the fact that the Reading Railway Company did not own any of the stock of the Reading Coal Company; that the two companies had separate forces of operatives and separate accounting systems; and upon the importance of maintaining "the theory of separate corporate entity" as a legal doctrine, concluded, upon the authority of *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 413, that the evidence did not justify holding that in transporting the products of the Reading Coal Company's mines to market the Reading Railway Company was carrying a commodity "mined, or produced by it, or under its authority" or which it owned "in whole, or in part," or in which it had "any interest direct or indirect."

But the question which we have presented by this branch of the case is not the technical one of whether ownership by a railroad company of stock in a coal company renders it unlawful for the former to carry the product of the latter, for here the railroad company did not own any of the stock of the coal company. The real question is whether combining in a single corporation the ownership of all of the stock of a carrier and of all of the stock of a coal company results in such community of interest or title in the product of the latter as to bring the case within the scope of the provisions of the act.

The purpose of the commodity clause was to put an

end to the injustice to the shipping public, which experience had shown to result from discriminations of various kinds, which inevitably grew up where a railroad company occupied the inconsistent positions of carrier and shipper. Plainly in such a case as we have here this evil would be present as fully as if the title to both the coal lands and the railroads were in the Holding Company, for all of the profits realized from the operations of the two must find their way ultimately into its treasury,—any discriminating practice which would harm the general shipper would profit the Holding Company. Being thus clearly within the evil to be remedied, there remains the question whether such a controlling stock ownership in a corporation is fairly within the scope of the language of the statute.

In terms the act declares that it shall be unlawful for any railroad company to transport in interstate commerce "any article or commodity . . . mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect."

Accepting the risk of obscuring the obvious by discussing it, and without splitting hairs as to where the naked legal title to the coal would be when in transit, we may be sure that it was mined and produced under the same "authority" that transported it over the railroad. All three of the Reading companies had the same officers and directors and it was under their authority that the mines were worked and the railroad operated, and they exercised that authority in the one case in precisely the same character as in the other—as officials of the Holding Company. The manner in which the stock of the three was held resulted, and was intended to result, in the abdication of all independent corporate action by both the Railway Company and the Coal Company, involving as it did the surrender to the Holding Company of the en-

tire conduct of their affairs. It would be to subordinate reality to legal form to hold that the coal mined by the Coal Company, under direction of the Holding Company's officials, was not produced by the same "authority" that operated the Reading Railway lines. The case falls clearly within the scope of the act, and for the violation of this commodity clause, as well as for its violation of the Anti-Trust Act, the combination between the Reading Railway Company and the Reading Coal Company must be dissolved.

The relation between the Central Railroad Company and the Wilkes-Barre Coal Company presents a different question, for here the Railroad Company owns over eleven-twelfths of the stock of the Coal Company, and therefore the holding in 213 U. S. 366, *supra*, is especially pressed in argument,—that the ownership of stock by a railroad company in a coal company does not cause the former to have such an interest in a legal or equitable sense in the product of the latter as to bring it within the prohibition of the act. But this holding was considered in *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, 272, and it was there held not applicable where a railroad company used its stock ownership for the purpose of securing a complete control over the affairs of a coal company, and of treating it as a mere agency or department of the owning company. This rule was repeated and applied in *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516, 529. It results that it may confidently be stated that the law upon this subject now is, that while the ownership by a railroad company of shares of the capital stock of a mining company does not necessarily create an identity of corporate interest between the two such as to render it unlawful under the commodities clause for the railroad company to transport in interstate commerce the products of such mining company, yet where such ownership of stock is resorted to, not for

the purpose of participating in the affairs of the corporation in which it is held in a manner normal and usual with stockholders, but for the purpose of making it a mere agent, or instrumentality or department of another company, the courts will look through the forms to the realities of the relation between the companies as if the corporate agency did not exist and will deal with them as the justice of the case may require. *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, 272, 273; *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516, 529; *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minneapolis Civic & Commerce Association*, 247 U. S. 490, 501.

Applying this rule of law to the relation between the Central Railroad Company and the Wilkes-Barre Coal Company, with the former owning over eleven-twelfths of the capital stock of the latter and using it as the coal mining department of its organization, we cannot doubt that it falls within the condemnation of the commodities clause and that this relation must also, for this reason, be dissolved.

It results that the decree of the District Court will be affirmed, as to the Lehigh Coal and Navigation Company, the Lehigh and New England Railroad Company, the Lehigh and Hudson River Railway Company, as to the restrictive covenants in the mining leases with respect to the shipping of coal, as to the dissolution of the combination between the Philadelphia and Reading Coal and Iron Company and the Lehigh and Wilkes-Barre Coal Company, maintained through the Reading Company and the Central Railroad Company of New Jersey. As to the Wilmington and Northern Railroad Company and as to the individual defendants, the bill will be dismissed without prejudice. As to the Reading Company, the Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company and the

Central Railroad Company of New Jersey, the decree of the District Court will be reversed and the cause remanded with directions to enter a decree in conformity with this opinion, dissolving the combination of the Reading Company, the Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, existing and maintained through the Reading Company, with such provision for the disposition of the shares of stock and bonds and other property of the various companies, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other, of the Philadelphia and Reading Railway Company, the Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company, and also that such disposition shall be made by the decree of the stocks and bonds of the Lehigh and Wilkes-Barre Coal Company, held by the Central Railroad Company of New Jersey, as may be necessary to establish entire independence between these two companies to the end that the affairs of all of these now combined companies may be conducted in harmony with the law.

Affirmed in part; reversed in part, and remanded with direction to enter a decree in conformity with this opinion.

MR. CHIEF JUSTICE WHITE, MR. JUSTICE HOLMES and MR. JUSTICE VAN DEVANTER, dissenting.

Except in so far as the decree below commanded a separation of interest between the Central Railroad of New Jersey and the Lehigh & Wilkes-Barre Coal Company, the court below dismissed, for want of equity, the bill of the United States brought to sever the existing relations

26. WHITE, Ch. J., HOLMES and VAN DEVANTER, JJ., dissenting.

between the Reading Company, the Philadelphia & Reading Railway Company, the Philadelphia & Reading Coal & Iron Company, the Central Railroad of New Jersey, the Lehigh & Wilkes-Barre Coal Company, and other corporations, on the ground that the relations between those companies resulted in a monopoly or combination in restraint of trade in violation of the Sherman Act and gave rise to a disregard of the commodities clause of the act of Congress.

By the opinion now announced, this action of the court below, in so far as it directed a dismissal, is reversed and virtually the full relief prayed by the Government is therefore granted. We are unable to concur in this conclusion because in our opinion neither the contentions as to the Sherman Act, nor the reliance upon the commodities clause, except to the extent that in the particulars stated they were sustained by the court below, have any foundation to rest upon. We do not state at any length the reasons which lead us to this view because the court below, composed of three circuit judges, in a comprehensive and clear opinion announced by McPherson, Judge, sustains the correctness of the action which it took and also demonstrates the error involved in the decree of this court reversing its action. *United States* v. *Reading Co.*, 226 Fed. Rep. 229. To that opinion we therefore refer as stating the reasons for our dissent.